

## Alabama Legislature Establishes Independent Tax Tribunal and Amends Taxpayers' Bill of Rights/Uniform Revenue Procedures

March 21, 2014

### Overview

The State of Alabama recently adopted into law Substitute House Bill 105, the "Alabama Taxpayer Fairness Act" ("H.B. 105"), establishing an independent tax tribunal and providing Alabama taxpayers with additional procedural protections.<sup>1</sup> In this Tax Alert we summarize these law changes, which are effective October 1, 2014.<sup>2</sup>

### Independent Tax Tribunal Established

To "[i]ncrease public confidence in the fairness of the state tax system[,] . . ." H.B. 105 establishes the Alabama Tax Tribunal ("ATT").<sup>3</sup> In creating the ATT, the new law eliminates the current Administrative Law Division of the Alabama Department of Revenue ("ADOR"). Some important features of the ATT include:

1. The ATT will consist of at least one full-time judge and there will be no more than three judges serving at any one time. ATT judges will be appointed by the Governor for a term of six years. After a judge has served a six-year term, the Governor may reappoint that judge to serve another term or appoint a new judge. If more than one judge is appointed, the Governor shall identify a "chief judge." The Governor may appoint *pro tem* judges if necessary. The first judge must be appointed by July 1, 2014.<sup>4</sup> ADOR Chief Administrative Law Judge Bill Thompson has been appointed as the first ATT judge.
2. Unlike previous versions of the bill, the adopted law does not require that judges be nominated by a Senate committee or that judges appointed by the Governor be confirmed by the Senate.
3. A taxpayer is not required to pay the tax amount at issue or post bond as a prerequisite to bringing a dispute to the ATT.<sup>5</sup> Also, no filing fees are imposed.<sup>6</sup>
4. With the exception of certain specified matters that are required to be filed directly with the circuit court,<sup>7</sup> certain property tax assessments,<sup>8</sup> taxes imposed by any self-administered cities and counties that elect to not participate "under the auspices" of the ATT,<sup>9</sup> and appeals of ATT decisions to the circuit court,<sup>10</sup> the ATT will be the sole and exclusive authority for the hearing and determination of questions of law and fact arising under Alabama tax laws.<sup>11</sup>
5. Appeals from the ATT are to be filed with the appropriate circuit court.<sup>12</sup>
6. The Judicial Inquiry Commission shall have the authority to remove any ATT Judge from office for "neglect of duty, inability to perform duties, malfeasance in office, or other good cause."<sup>13</sup> In addition, ATT judges may be removed on the same grounds as applicable to state circuit court judges.<sup>14</sup>

<sup>1</sup> Al. Act No. 2014-146 (H.B. 105) (Mar. 11, 2014).

<sup>2</sup> H.B. 105, Sec. 4, adding Chap. 2B, Ala. Code § 40-2B-1(b)(3); H.B. 105, Sec. 8.

<sup>3</sup> H.B. 105, Sec. 4, adding Chap. 2B, Ala. Code § 40-2B-1 (a).

<sup>4</sup> H.B. 105, Sec. 4, adding Chap. 2B, Ala. Code § 40-2B-1(a)-(c).

<sup>5</sup> H.B. 105, Sec. 4, adding Chap. 2B, Ala. Code § 40-2B-1 (a).

<sup>6</sup> H.B. 105, Sec. 4, adding Chap. 2B, Ala. Code § 40-2B-1(i).

<sup>7</sup> See, H.B. 105, Sec. 4, adding Chap. 2B, Ala. Code § 40-2B-1(g)(1)b.

<sup>8</sup> See, H.B. 105, Sec. 4, adding Chap. 2B, Ala. Code § 40-2B-1(g)(1)c.

<sup>9</sup> See, H.B. 105, Sec. 4, adding Chap. 2B, Ala. Code § 40-2B-1(g)(1)a.

<sup>10</sup> See, H.B. 105, Sec. 4, adding Chap. 2B, Ala. Code § 40-2B-1(m).

<sup>11</sup> H.B. 105, Sec. 4, adding Chap. 2B, Ala. Code § 40-2B-1(g)(1).

<sup>12</sup> H.B. 105, Sec. 3, amending Chap. 2A Ala. Code § 40-2A-8(e); H.B. 105, Sec. 4, adding Chap. 2B Ala. Code § 40-2B-1(m)(1).

<sup>13</sup> H.B. 105, Sec. 4, adding Chap. 2B, Ala. Code § 40-2B-1(c)(7).

<sup>14</sup> H.B. 105, Sec. 4, adding Chap. 2B, Ala. Code § 40-2B-1(d)(4).

## Updates and Changes to Existing Procedural Protections

H.B. 105 also includes several important amendments to the existing procedural protections contained in the Alabama Taxpayers' Bill of Rights/Uniform Revenue Procedures Act of 1992. The amendments include:

- Time limitation for entering preliminary assessment: The due date for preliminary and final assessments is three years from the due date of the return or three years from the date the return is filed with the ADOR, whichever is later, or if no return is required to be filed, within three years of the due date of the tax.<sup>15</sup> Previously, the assessment had to be "entered" within three years of the due date of the return or three years from when the return was filed. "Entered" meant entered in the ADOR's system.
- Option of appealing net operating loss ("NOL") adjustments to the ATT: A taxpayer may elect to file a notice of appeal with the ATT regarding a notice of proposed adjustment issued by the ADOR affecting the taxpayer's NOL deductions or carryovers. Significantly, taxpayers may appeal the notice even if the proposed adjustment does not result in an assessment of tax or a denied refund claim.<sup>16</sup>
- Innocent spouse: The new law incorporates two changes to the "innocent spouse" rules, including that a husband or wife will be relieved of certain liabilities to the same extent and in the same manner as allowed by the Internal Revenue Code ("IRC"). Previously, Alabama law did not wholly conform to the IRC in this regard.<sup>17</sup>
- Taxpayer Advocate: The appointed Taxpayer Advocate will have increased responsibility, including reviewing, at the request of the ATT, a final order issued by the ATT that was not timely appealed if there is subsequently discovered evidence that "could not have been discovered in time to file an application for rehearing." The Taxpayer Advocate may propose taxpayer relief to the ATT that is approved by the ADOR Commissioner or Assistant Commissioner.<sup>18</sup>
- Inactive preliminary assessments: If a preliminary assessment is not withdrawn or made final by the ADOR within five years from the date of entry, the taxpayer may appeal the preliminary assessment to the ATT or to the appropriate circuit court as provided for an appeal of a final assessment. Under current law, the issuance of a preliminary assessment suspends the statute of limitations indefinitely, during which time a taxpayer has no appeal rights.<sup>19</sup>
- Exclusions related to appeals to circuit court: A taxpayer may appeal a final assessment directly to the circuit court or the appeal may pass to the circuit court from the ATT. In such case, a taxpayer must file a pledge or collateral assignment of securities with the circuit court. However, a taxpayer who has a net worth of less than \$250,000 does not need to post an appeal bond or pay the disputed tax before filing the appeal. Currently, the applicable threshold is \$100,000 in net worth.<sup>20</sup>
- Revenue rulings and procedure changes: The ADOR attorney assigned to review a request for a revenue ruling may consult with the taxpayer or the taxpayer's delegate, if so requested by the taxpayer, prior to issuing the ruling.<sup>21</sup>

## Contacts

If you have questions regarding these Alabama law changes, please contact any of the following Deloitte Tax professionals.

Forrest J. Hunter  
Tax Senior Manager  
Deloitte Tax LLP, Atlanta  
[fhunter@deloitte.com](mailto:fhunter@deloitte.com)  
(404) 220-1387

Susan Ferlianto  
Tax Manager  
Deloitte Tax LLP, Atlanta  
[sferlianto@deloitte.com](mailto:sferlianto@deloitte.com)  
(404) 631-2721

Sean Lay  
Tax Director  
Deloitte Tax LLP, Birmingham  
[seanlay@deloitte.com](mailto:seanlay@deloitte.com)  
(205) 321-6037

<sup>15</sup> H.B. 105 Sec. 3, amending Ala. Code § 40-2A-7 (c)(2).

<sup>16</sup> H.B. 105 Sec. 2, adding Chap. 2A Ala. Code § 40-2A-7 (2)(b).

<sup>17</sup> H.B. 105 Sec. 3, amending Ala. Code § 40-18-27 (e).

<sup>18</sup> H.B. 105 Sec. 3, adding Ala. Code § 40-2A-4 (d).

<sup>19</sup> H.B. 105 Sec. 3, amending Ala. Code § 40-2A-7 (b)(1).

<sup>20</sup> H.B. 105 Sec. 3, amending Ala. Code § 40-2A-7 (b)(2)(v).

<sup>21</sup> H.B. 105 Sec. 3, amending Ala. Code § 40-2A-5 (a).

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