Municipal Sales Tax in Alabama

What is the easiest municipal revenue to collect and the least painful for citizens, who need and receive municipal services, to pay? What is the only revenue source that spreads the cost of city government fairly among all citizens demanding and receiving city services? What revenue source allows city government to operate without imposing heavy burdens on homeowners and businesses already overtaxed? Many cities and towns in Alabama discovered the answer to these questions when they adopted some form of a municipal sales tax.

Municipal governing bodies may adopt one of two basic types of ordinances that levy a tax in the nature of a sales tax. Many municipalities levy a "true" sales tax as authorized by Sections 11-51-200 through 11-51-211, Code of Alabama 1975.

Other cities and towns have adopted a "gross receipts tax in the nature of a sales tax" as authorized by Section 11-51-90 and limited by Section 11-51-209 of the Code of Alabama 1975. **Only municipalities with this type tax in place before February 25, 1997, can continue to use it.**

"Gross receipts tax in the nature of a sales tax" is defined in Section 40-2A-3(8) of the Code. The distinction between the two types of ordinances is the fact that the true sales tax requires merchants to pass the tax on to consumers while the gross receipts license tax makes it optional with the merchant.

This article explains the options available to a municipal governing body which wishes to enact a sales tax ordinance. It will also explain the procedures available for the administration, collection and enforcement of the tax.

Municipal Exemptions

Section 40-23-4(11) and 40-23-4(15) exempt municipalities from payment of sales and use taxes. Additionally, municipalities and their instrumentalities, except for certain educational facilities, are not required to collect sales and use taxes on items they sell. *See*, Regulation 810-6-2-.92.02.

Nexus

Before determining whether any tax is owed to a particular municipality, there must exist some "nexus" between the transaction and the taxing jurisdiction. Webster defines "nexus" as a connection, a tie or a link. For taxation purposes, legally speaking, nexus is some activity, relationship, or connection which is necessary to subject a person, business, or corporation to a jurisdiction's taxing powers.

Nexus is related to the minimum contacts test that has historically been applied by the courts for determining personal jurisdiction. Basically, a retailer must have "established some distinct connection with the [taxing jurisdiction], sufficient to have submitted himself to the jurisdiction of the [taxing jurisdiction] for tax purposes." *See, MacFadden-Bartell Corp.,* 194 So.2d 543, 547 (Ala. 1967). In the *interstate* context, the United States Supreme Court has spelled out nexus requirements to satisfy the requirements of the Commerce Clause to the United States Constitution (discussed in detail in the following section) and although the Commerce Clause is not implicated in *intrastate* commerce, the due process portion of the analysis is applicable.

With regard to the collection of state taxes, the Alabama Supreme Court, interpreting decisions of the United States Supreme Court, has concluded that "there must be a [connection] sufficient to provide a business nexus with Alabama – by agent or salesmen, or at a very minimum, by an independent contractor within the State of Alabama" to require an out of state retailer to collect Alabama use tax. *State v. Lane Bryant, Inc.*, 171 So.2d 91 (Ala. 1965). Issues of nexus generally arise from three types of taxes: true sales and use taxes, gross receipts taxes in the nature of a sales tax and license taxes.

The true sales and use tax is a *consumer* tax; that is, although the seller collects this tax, he or she serves only as an agent for the taxing jurisdiction. The purchaser is the ultimate taxpayer. For purposes of the imposition of a *sales* tax, a sale is deemed completed at the point of delivery, regardless of agreements to the contrary or the mode of delivery. The *use* tax

is a companion tax to the sales tax and is imposed on the "storage, use or other consumption" in the taxing jurisdiction of tangible personal property purchased at retail. *See,* Section 40-23-61, Code of Alabama 1975.

In the case of a consumer tax, where the taxpayer takes delivery of the product generally establishes nexus, although in *Yelverton's, Inc. v. Jefferson County*, 742 So.2d 1216 (Ala. Civ. App. 1997) (cert. quashed, 742 So.2d 1224 (Ala. 1999)), the Alabama Supreme Court held that if the State Department of Revenue adopts a different rule administratively, municipalities must follow DOR's administrative determination. *See also*, AGO 2000-128, where the Attorney General concluded that the City of Auburn could not require a Montgomery business that only made deliveries of merchandise into Auburn to collect and remit any sales or use tax imposed by the city of Auburn, due to a DOR regulation. Instead of a true sales tax, a few municipalities assess a gross receipts tax in the nature of a sales tax. The source of this power is Section 11-51-90, Code of Alabama 1975, thus nexus would be determined in the same manner as are license taxes.

Section 11-51-90 authorizes all municipalities to collect license taxes. These fees are collected from the business itself for the privilege of doing business within the municipality. License fees are generally based on either a flat rate or on the gross receipts of the company. Nexus in the license situation generally depends upon a physical connection between the seller and the municipality in question.

Regarding nexus, Section 40-23-190 of the Code of Alabama 1975 establishes the conditions under which an affiliation between an out-of-state business and an in-state business creates remote entity nexus with Alabama to require the business to collect and remit state and local use tax. The following conditions establish remote entity nexus requiring an out-of-state business to collect and remit state and local use tax:

- The out-of-state business and the in-state business maintaining one or more locations within Alabama are related parties; and one or more of the following conditions is met:
- The out-of-state business and the in-state business use an identical or substantially similar name, tradename, trademark or goodwill, to develop, promote or maintain sales, or
- The out-of-state business and the in-state business pay for each other's services in whole or in part contingent upon the volume or value of sales, or
- The out-of-state business and the in-state business share a common business plan or substantially coordinate their business plans, or
- The in-state business provides services to, or that inure to the benefit of, the out-of-state business related to developing, promoting or maintaining the in-state market.

An out-of-state business and an in-state business are related parties if one of the entities meets at least one of the following tests with respect to the other entity:

- One or both entities is a corporation, and one entity and any party related to that entity in a manner that would require an attribution of stock from the corporation under the attribution rules of Section 3l8 of the IRC owns directly, indirectly, beneficially or constructively, at least 50 percent of the value of the corporation's outstanding stock; or
- One or both entities is a limited liability company, partnership, estate or trust and any member, partner or beneficiary and the limited liability company, partnership, estate or trust and its members, partners or beneficiaries own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the profits, capital, stock, or value of the other entity or both entities; or
- An individual stockholder and the members of the stockholder's family, as defined in Section 318 of the IRC, owns directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of both entities' outstanding stock.

The Gross Receipts License Tax

Prior to 1969, Alabama cities and towns had no authority to levy a "true sales tax" – that is, one placing the tax burden directly on the consumer. However, Section 11-51-90, Code of Alabama 1975, did confer specific authority upon Alabama municipalities to levy and collect taxes for the privilege of doing business in the corporate limits or police jurisdiction of the municipality, including the authority to establish the amount of the license on the basis of gross receipts of the business. This is now called a "gross receipts tax in the nature of a sales tax," and is defined in Section 40-2A-3(8) of the Code. Please note that Section 11-51-209 now prevents implementation of this type tax. Only those cities and towns operating under this type tax on February 25, 1997, can continue to do so.

Section 11-51-90 does not authorize a municipality to levy a tax on the consumer or purchaser for the privilege of consumption. The Supreme Court of Alabama has upheld municipal privilege license taxes based upon gross receipts in the

form of a sales tax, provided the licensee (merchant) is not required to pass the tax on to the consumer. The merchant has the option of passing the tax on to the consumer, but the municipal ordinance cannot require the merchant to do so. *Evers v. Dadeville*, 61 So.2d 78 (Ala. 1952); *Al Means, Inc. v. Montgomery*, 104 So.2d 816 (Ala. 1958).

The amount of the gross receipts license tax paid for the privilege of doing business in the municipality may be based upon gross sales, including sales of goods shipped outside of the municipality and its police jurisdiction. *Ingalls Iron Works v. Birmingham*, 27 So.2d 788 (Ala. 1946); *Gotlieb v. Birmingham*, 11 So.2d 363 (Ala. 1943). A few cities and towns have expressly exempted sales of goods which are delivered to customers beyond the corporate limits and police jurisdiction. In most cases, this has resulted in nothing but headaches because it opens the door to violations which cannot be proved by audit. Furthermore, most municipalities rely upon the returns made to the State Sales Tax Division of the Department of Revenue as a check against the returns made to the municipality. If such sales are exempted from the municipal levy, it is practically impossible to audit the taxpayer's records by comparing this municipal return with the state return. The procedure to be followed by the municipality to obtain state sales tax data will be discussed later in this article.

Retail merchants making deliveries to customers in the municipality from places of business outside of the municipality and its police jurisdiction are liable for payment of the municipality's gross receipts (sales) license tax. In such cases, the sale of the merchandise is not completed until the goods are delivered in the municipality. This delivery, completing the sale, constitutes the taxable incident which subjects the seller to the license. Cases upholding this position are *Haden v. Olan Mills*, 135 So.2d 388 (Ala. 1961); *Graves v. State*, 62 So.2d 446 (Ala. 1952); and *Sanford Service Company v. Andalusia*, 55 So.2d 856 (Ala. 1951).

Section 40-23-3, Code of Alabama 1975, authorizes merchants to exclude all municipal sales tax collections from their gross receipts sales in computing their state sales tax. Until this legislation was passed, merchants were required by the State Department of Revenue to include municipal sales tax collections in their gross sales for the purpose of computing the amount they were to pay as state sales tax. In addition, Section 40-23-130, Code of Alabama 1975, provides that if a municipality imposes a gross receipts tax on the sale of gasoline and motor fuel, then the tax imposed on the sale of gasoline and motor fuel by the state, federal or local government shall not be included in the gross receipts in computing the gross receipts tax owed to the local government.

Section 212 of the Alabama Constitution, 1901, prohibits delegation of the taxing power. Basing his opinion on this Constitutional provision, the Attorney General advised Honorable W. D. Cochran on June 23, 1958, that whether or not a municipality adopts a gross receipts license tax may not be made to depend upon a favorable referendum.

Because the municipal "gross receipts tax in the nature of a sales tax" is a license tax which the merchant may not be required to collect from the consumer or purchaser, the municipality cannot establish brackets to guide the merchant in collecting the tax from the consumer. Nevertheless, there is nothing to prevent the municipal administration from suggesting a realistic bracket system which will help the merchant pass the municipal levy on to the purchaser along with the state sales tax.

The "True" Sales and Use Tax

As of 1969, municipalities have the authority to convert their gross receipts license taxes in the nature of sales taxes to "true" sales taxes on the consumer rather than on the seller. Municipalities also have the authority to adopt a use tax levied on purchases of goods outside the municipality that are brought into the municipality for use or consumption within the municipality. Sections 11-51-200 through 11-51-211, Code of Alabama 1975.

In 1998, the Legislature passed two acts that implemented sweeping changes in the structure of municipal sales and use taxation. These acts, the Local Tax Simplification Act of 1998, Act 98-192 (hereinafter referred to as Act I) and the Local Tax Procedures Act, Act 98-191 (hereinafter referred to as Act II), affect all municipal and county governments and the State Department of Revenue. The effect varies depending on whether the local government uses the Department of Revenue or is self-administered either with their own staff or by a private collector.

The purpose of Act I is set out in the legislative findings of that act as follows:

"The Legislature hereby finds and declares that the enactment by this state of a simplified system of local sales, use, rental, and lodgings taxes which may be levied by or for the benefit of municipalities and counties in Alabama effectuates desirable public policy by promoting understanding of and compliance with applicable local tax laws."

This article incorporates these two acts and discusses how they relate to the administration of municipal sales, use and "gross receipts tax in the nature of a sales tax" taxes.

The Application of State Rules and Regulations

Although there has been some confusion regarding the applicability of state sales and use tax laws to municipalities, it is now clear that at least local sales and use taxes are subject to certain state laws, including the Taxpayer's Bill of Rights. In

General Motors Acceptance Corp. v. Red Bay, 894 So.2d 650, (2004), the Alabama Supreme Court made clear that the Bill of Rights does apply to municipalities.

The court's holding in *Red Bay* means that municipalities must be familiar with the procedures followed in the Taxpayer's Bill of Rights and apply them in the administration of their own local sales and use taxes. In the words of the court, this means that, like DOR, local governments must:

> "provide a taxpayer with notice of any planned audit of the taxpayer's books and records; with a statement of the taxpayer's procedural rights, including the right to an administrative review of a preliminary assessment; and with a written description of the grounds for any claimed underpayment or nonpayment of a tax. Section 40-2A-4. A taxpayer has the right to the entry of a preliminary assessment stating the specific amount of taxes the Department claims the taxpayer owes, which must be either mailed or personally delivered to the taxpayer. Section 40-2A-7. The taxpayer is then entitled to dispute the preliminary assessment by filing a petition for review with the Department. If the parties are unable to resolve their differences and the Department determines that the assessment is valid, it must enter a final assessment. The taxpayer may then appeal the assessment to the administrative law division of the Department (or to a similar administrative agency in the event the dispute involves local taxes levied by a municipality or county not administered by the Department) or to the circuit court in the county where the taxpayer resides. Section 40-2A-5.**"**

Act I – The Local Tax Simplification Act of 1998

Under Act I, municipal sales and use taxes must parallel the state sales and use tax as levied in certain enumerated Code sections, unless otherwise provided and "except where inapplicable."

Act I states that this phrase: "shall not be construed to permit a self-administered municipality to adopt or interpret an ordinance, resolution, policy, or practice that relies on that phrase, either directly or indirectly, in order to disavow, disregard, or attempt to disavow or disregard the mandate ... for conformity with the corresponding state tax levy, unless the self-administered municipality can demonstrate that the ordinance, resolution, policy or practice will simplify collection or administration of the tax or is being made for the convenience of the taxpayer." Section 11-51-200, Code of Alabama 1975.

Local sales and use taxes are subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the Alabama Administrative Procedures Act, direct pay permit and drive-out certificate procedures, and deductions for the corresponding state tax in certain enumerated Code sections, except where the rules are inapplicable, as provided above, or where some other statutory rule applies. Additionally, **the local government may set its own tax rate**.

A municipality may also establish a lodging tax, parallel to the state lodging tax. Self-administered municipalities (those that have not chosen to allow the state to collect the local taxes) may establish rules and regulations for administering their own sales, use and lodging taxes. These rules may not conflict with State Department of Revenue (hereinafter referred to as DOR) regulations promulgated pursuant to the Administrative Procedures Act for the corresponding state tax.

State Collection – Sections 11-51-208 and 11-51-180

Municipal governments may elect to have DOR collect sales and use and lodging taxes for them. These taxes are collected along with state taxes and distributed by the state to the municipality. DOR will only collect the taxes it is authorized by statute to collect. They may not collect any municipal gasoline or motor fuel taxes, privilege or business license taxes, occupational taxes, tobacco taxes or other similar taxes levied pursuant to Section 11-51-90, Code of Alabama 1975. An exception is made for municipalities that currently assess privilege or license taxes levied in the nature of a sales or use tax.

In order for DOR to begin collecting local taxes for a municipality, the municipality must first have an ordinance levying the tax in question. The municipality must file with DOR a certified copy of its ordinance at least 30 days prior to the first day of the month on which the ordinance will take effect. Similarly, changes in the rate must be filed with DOR at least 30 days prior to the date they will take effect. If the state already collects for a municipality, it does not have to send a new certified copy of its ordinance, unless it is making a change in its tax rate.

As noted above, the municipality may set its own tax rate. The state will collect these taxes subject to all definitions, exceptions, exemptions, provisions, statutes of limitations, penalties, fines, punishments and deductions as are applicable to the parallel state tax.

The commissioner of revenue must deposit into the state treasury all municipal taxes that are collected by the state pursuant to this authority. Every two weeks, the commissioner must certify to the state comptroller the amount of taxes that were collected during the two-week period preceding the certification and the amount that must be distributed to each municipality. These funds must be distributed to the municipalities within three days after the commissioner files the certification.

DOR may charge a fee for collecting these local taxes. Act I, though, limits DOR to a maximum charge of two percent of the amount collected for each municipality. Section 11-51-183, Code of Alabama 1975. Additionally, within 60 days of the end of the fiscal year, DOR must recompute the cost of collecting municipal taxes during the preceding year and redistribute any over-charges to the municipalities for which DOR collects. This distribution is made on a pro-rata basis of each municipality's receipts. If the cost of collection exceeded the amount DOR charged for collecting the municipal taxes, DOR is not permitted to collect any under-charges from the municipalities. At least once each month, the state comptroller must issue a warrant on the local funds collected for the amount of DOR's collection costs, meaning that DOR's collection costs will be deducted from the taxes it distributes.

Act I also allows DOR to collect local rental taxes and gross receipt taxes in the nature of a sales tax. Local rental taxes collected by DOR must parallel the state levy, except for the rate of the tax.

Act I also prohibits entities that were not levying a gross receipts tax in the nature of a sales tax on February 25, 1997, from enacting this type of tax. Gross receipts tax in the nature of a sales tax is defined as:

"a privilege or license tax, imposed by a municipality or county, measured by gross receipts or gross proceeds of sales and which: (i) was in effect on or before February 25, 1997, or is an amendment to a tax which was in effect on that date; (ii) is levied against those selling tangible personal property at retail, those operating places of amusement or entertainment, those making street deliveries, and those leasing or renting tangible personal property; and (iii) is due and payable to a county or municipality monthly or quarterly." Section 40-2A-3(8), Code of Alabama 1975.

A small number of municipalities have this type of tax. This restriction does not affect the authority of these municipalities to continue to levy a gross receipts privilege or license tax.

Section 11-51-184 authorizes the commissioner to hire special counsel as needed to enforce municipal license tax ordinances. The costs of such legal aid are to be paid from the municipal taxes collected for the municipality.

It is very important that all municipal governing bodies using the collection service of the State Department of Revenue set tax rates that can be easily reduced into usable decimal figures. This will make it much easier for DOR to administer the collection of the municipality's taxes. Fractions that are easy to work with should be used, e.g., 1/4, 1/2, 3/4, etc., and not fractions such as 1/8, 3/16, 3/8, etc.

Tax Forms – Section 11-51-210

One of the primary goals of the 1998 legislation was to simplify the completion and filing of forms for the taxpayer. Act I establishes a procedure for the development of standardized forms. The type of form a taxpayer uses will vary depending on whether the local entity collects its own taxes or DOR collects its taxes.

If DOR collects the local taxes, DOR is responsible for creating and distributing the form taxpayer's use.

The form that must be used by self-administered municipalities and counties has been developed by a committee consisting of three representatives appointed by the League, and three representatives appointed by the Association of County Commissions. Now that the form has been adopted, all self-administered municipalities and counties (except those who have gross receipts taxes in the nature of sales taxes) must use this form to collect their local sales, use, rental and lodging taxes.

Bulk Submissions – Section 11-51-210(d)

Self-administered municipalities and counties must accept bulk submissions of sales, use, rental and lodging taxes, provided the bulk submissions are made using the form created above. All bulk submissions must include the local government's assigned identification number for each taxpayer and vendee for each tax paid. Additionally, the submission must contain sufficient information to allow the government to identify each taxpayer and vendee and determine the amount of tax each owes. Acceptance of bulk submissions does not relieve the taxpayer of the liability for any tax due because of an error or omission made by the taxpayer's representative. The municipality or county may require the taxpayer or its authorized representative to sign the submission. Forms for making bulk submissions can be obtained from the Department of Revenue's web site.

Tax Rate Publication – Section 11-51-210(e)

By June 30, 1998, every municipality levying a sales, use, rental, lodging, tobacco, gasoline, or ad valorem tax as of June 1, 1998, must submit to DOR a list of the taxes and the rate of the taxes levied or administered by the municipality. Thereafter, any municipality which enacts or amends one of these taxes must notify DOR in writing at least 30 days prior to the effective date of the tax or amendment.

DOR will compile this information into a written publication that will be published and distributed on a monthly basis to every municipality, county, private auditing firm and to anyone else who requests the publication.

Failure of a municipality to notify DOR of a new tax or amendment does not invalidate the tax. Also, a taxpayer is not

relieved of a duty to pay a tax even if the published tax rate is in error. However, no penalties or interest for late payment or underpayment of taxes shall begin to accrue until the proper tax rate or levy has been on file at DOR for 30 days, unless the taxpayer had actual knowledge of the correct tax rate or levy on an earlier date.

Quarterly Returns – Section 11-51-211

For those entities DOR collects for, if a taxpayer's state sales tax liability averages less than $200 per month during the preceding calendar year, the taxpayer may elect to file a quarterly sales tax return and remittance in lieu of monthly returns. A taxpayer may elect to file a quarterly use tax return only if:

a. the total state sales tax for which the taxpayer is liable averages less than $200 per month during the preceding calendar year, and

b. the total state use tax averages less than $200 per month during the preceding calendar year.

In either case, the taxpayer must elect to file quarterly by notifying DOR in writing no later than February 20 of each year. Quarterly returns are not due before the 20th day of the month next succeeding the end of the quarter for which the tax is due. In any event, no state-administered local sales or use taxes are due until January 20 of each year unless the total state sales or use tax for which any person is liable during the preceding calendar year exceeds $10.

Similar rules apply to self-administered municipalities. If a taxpayer's total state sales tax liability averages less than $200 per month during the preceding calendar year, the taxpayer may also elect to file quarterly returns for local taxes. If the taxpayer is domiciled in Alabama, he or she may also elect to pay use taxes quarterly when the total state sales tax liability averages less than $200 per month during the preceding calendar year. The municipality must receive notice from the taxpayer that he or she will file quarterly no later than February 20 of each year. Quarterly returns are not due before the 20th day of the month next succeeding the end of the quarter for which the tax is due. In any event, no self-administered local sales or use taxes are due until January 20 of each year unless the total state sales or use tax for which any person is liable during the preceding calendar year exceeds $10.

Act I does not allow taxpayers who are not domiciled in Alabama to pay their use taxes quarterly to a self-administered municipality. A self-administered municipality may allow a taxpayer to file less frequently than quarterly.

Improper Payments – Section 40-23-2.1(c)

Only one municipal sales tax, gross receipts tax in the nature of a sales tax, use tax or rental tax may be collected from the same sale or rental transaction.

If a sales tax, gross receipts tax in the nature of a sales tax, use tax or rental tax owed to one municipality (called the "proper locality" in Act I) is erroneously paid to a different municipality in good faith, based upon a reasonable interpretation of the enabling ordinance, the municipality receiving the erroneous payment shall refund the overpaid tax, without interest, to the taxpayer within 60 days of the taxpayer's compliance with applicable refund procedures. The taxpayer must comply with refund procedures within 60 days of receiving notice of the erroneous payment. If the taxpayer fails to act within this time, interest begins to accrue on the 61st day and continues until the tax is paid.

If the taxpayer timely files for a refund, the proper locality may not assess or attempt to assess the tax or any related interest or penalties. No interest or penalties accrue until the date the taxpayer or his or her agent receives the overpayment refund. The taxpayer must remit the taxes owed to the proper locality within 15 days of receipt. If the tax rate imposed by the municipality receiving the erroneous payment exceeds the rate imposed by the proper locality, the municipality that erroneously received the tax does not have to refund the difference unless the actual taxpayer properly files a petition for a refund of the overage.

Interest – Section 11-51-208(f)

A self-administered municipality may elect to collect interest on tax delinquencies. If it does so, it must also pay interest on any refund of a tax that is erroneously paid. The rate of interest in both cases is one percent per month. Erroneously paid refers to taxes "erroneously paid to the self-administered municipality or its agent as a result of any error, omission or inaccurate advice by or on behalf of the self-administered municipality, including [mistakes] in connection with a prior examination of its books and records by the self-administered municipality or its agent." Section 11-51-208(f), Code of Alabama 1975.

Act II – Local Tax Procedures Act

Act II is designed to protect taxpayers from intrusive tax collection procedures while at the same time guaranteeing the full collection of taxes owed. Many of the provisions of Act II apply to private auditing or collecting firms that contract with local governments for the collection of their taxes.

"Private auditing or collecting firms" is defined in Act II as: "Any person in the business of collecting, through contract or otherwise, local sales, use, rental, lodgings or other taxes or license fees for any county or municipality, or auditing any taxpayer, through the examination of books and records, for any county or municipality." Section 40-2A-3(17), Code of Alabama 1975.

This definition does not include DOR, counties or municipalities which collect taxes for other counties or municipalities, nor does it include persons or firms whose sole function is the collection of delinquent municipal insurance premium license fees if the person or firm has no authority to determine the amount of the penalty, fee, interests or costs owed. The terms of this definition make it clear that the phrase "private auditing or collecting firms" does not include municipalities or counties which collect their own taxes.

Revenue Rulings – Section 40-2A-5

Act II authorizes the State Revenue Commissioner to issue revenue rulings in response to a written request by the governing body of a self-administered county or municipality, or to a taxpayer, regarding the substantive application of local sales, use, rental or lodging taxes. The commissioner, though, cannot issue rulings concerning self-administered local entities that assess gross receipts taxes in the nature of sales taxes. Also, the commissioner cannot issue any ruling that establishes a rule of nexus for self-administered local governments.

Revenue rulings issued to self-administered municipalities are binding only with respect to the taxpayer involved in the request and only with respect to the specific facts stated in the request. A taxpayer must pay a fee of $200 for a ruling. If the request for a ruling comes from a local government, the fee is waived

Upon receiving a request from a taxpayer for a revenue ruling regarding the application of a self-administered tax, DOR must forward a copy of the request to the local government involved and consult with and accept written comments prior to issuing the ruling. Revenue rulings must be issued within 45 following the receipt of the request.

Contingent Contracts – Section 40-2A-6

Section 40-2A-6, Code of Alabama 1975, prohibits certain contracts for the examination of a taxpayer's books or records if any part of the compensation or other benefits paid to the person or firm conducting the examination is contingent on the fees, costs, interest or penalties assessed against or collected from the taxpayer. One exception is where the person or firm collecting the tax has no authority to determine the amount of the tax, interest, penalty or costs owed.

Act II amends this section to also prohibit hearings or appeals officers from receiving compensation or benefits contingent upon the amount of tax, interest, costs or penalties assessed or collected from the taxpayer. Any contract that violates this prohibition is void. Additionally, any assessment that comes out of an arrangement that violates this provision is void and unenforceable. This section does not prohibit employees of a private auditing or collecting firm from participating in a profit-sharing arrangement that is available to other employees of the firm who are not involved in examining taxpayer's books and records, if the formula for the arrangement is based primarily on the overall profitability of the firm.

Violation of this prohibition is a Class A misdemeanor. A private auditing or collecting firm that violates this provision forfeits its license until the firm implements remedial measures recommended by the board created for this purpose, as set out below.

Audit Costs – Section 40-2A-6(d)

With only a few exceptions, state and local taxing authorities are prohibited from assessing the costs of conducting audits against a taxpayer. A self-administered local government may assess reasonable auditing costs (based on the then current state government per diem rate) against a taxpayer if:

1. the taxpayer received notice by certified mail, return receipt requested, at least 30 days prior to the date on which an examination was to start;
2. the taxpayer failed or refused to respond or did not propose a reasonable alternative date for the audit within 15 days of receiving notice of the pending audit;
3. the taxpayer and the local entity agreed in writing to an alternative date for the audit and the taxpayer failed or refused to allow reasonable access to its books and records on that date.

Disclosure of Information – Section 40-2A-10

It is unlawful for any person to print, publish, or divulge, without the written permission or approval of the taxpayer, the return of any taxpayer or any part of the return, or any information secured in arriving at the amount of tax or value

reported, for any purpose other than the proper administration of any matter administered by the department, a county, or a municipality, or upon order of any court, or as otherwise allowed by law. Any person found guilty of violating this section shall, for each act of disclosure, have committed a Class A misdemeanor. This does not apply to the disclosure of the amount of local privilege license or franchise fees paid to counties and municipalities by any taxpayer possessing a franchise (whether or not exclusive) granted by the respective county or municipality. However, any information other than the amount of license or franchise fees paid, including returns or parts thereof or documents filed with or secured by any municipality or county or their authorized agent and relating to local privilege licenses and franchises shall remain confidential information.

Local governments may exchange information with each other, provided that the same confidentiality rules apply.

Act II prohibits assessing damages, attorneys' fees or court costs against a government or against government employees, officials or officers for violation of this section.

Contracts with Private Examining or Collecting Firms – Section 40-2A-12

Self-administered local governments may not enter into a contract with a private examining or collecting firm for a term of more than three years. The contract may be renewed once it expires. A contract expires if the private firm loses or foregoes its license pursuant to new Sections 40-2A-13 or 40-2A-14.

Audit Limitations – Section 40-2A-13

Local governments and their agents must comply with Section 40-2A-13 and the Taxpayers' Bill of Rights when conducting audits for sales, use, rental or lodging tax compliance.

Section 40-2A-13 limits the examination of a taxpayer's books and records for compliance with taxes to one audit every three taxable years. This means that each taxing entity may conduct only one audit of the taxpayer during this period. However, any of these entities may conduct additional audits if, after conducting an investigation, it notifies the taxpayer in writing of the reasons why the additional examination is necessary. Valid reasons for additional audits are:

to fulfill an obligation to another state pursuant to a Southeastern Association of Tax Administrators (SEATA) exchange of information agreement or to the Multistate Tax Commission;

- to follow up on leads furnished by the Multistate Tax Commission or pursuant to a SEATA exchange agreement;
- to verify a direct or joint refund claim and to determine if there is any offsetting tax liability to be credited against or that may exceed the refund claim;
- to secure a tax return and the tax, penalty, interest, and service charge, if any, due thereon for any reporting period for which the taxpayer has failed to file a return by the due date of the return;
- to collect any tax, penalty, interest, and service charge, if any, which the taxpayer has failed to remit within 30 days after receiving notification that the amount is due;
- to secure a corrected return and the additional tax, penalty, interest, and service charge when the taxpayer has failed to file a corrected return and remit any additional amount due within 30 days of receiving a request for a corrected return;
- to collect any tax due based on substantial evidence of fraud or tax evasion discovered since the prior examination, but only if the governing body explains to the taxpayer in writing the basis for the alleged fraud or evasion; or
- to follow up on representations by the taxpayer that it is going out of business or that the taxpayer has gone out of business.

Any person auditing a taxpayer for a self-administered local government must disclose in writing, upon first contact with the taxpayer, the identity of the governments the person represents, and must provide the taxpayer with written authorization from each government represented

On or before January 15 of each year, each private firm must disclose in writing to DOR and to the self-administered local governments it represents on the date of disclosure, the identity of all local governments for which it performed a sales, use, rental or lodging tax audit during the preceding year.

A private firm must simultaneously examine a taxpayer's books and records for all self-administered local governments it serves on the date it first contacts the taxpayer. The firm may not disclose or encourage others to disclose the fact that the firm is auditing a taxpayer to any non-client local government or its agents. The firm may conduct an audit of the same taxpayer for local government clients it did not represent on the date of first contact with the taxpayer, if the firm has not disclosed or encouraged others the fact that the firm was conducting an audit during the audit and if at least one year has passed since the date the firm completed its last examination of the taxpayer's records, as certified by the firm. This restriction does not apply if grounds exist for a re-audit, as set out above, or if the one-year delay would result in the closing of a tax year by virtue of the applicable statute of limitations and the taxpayer fails or refuses to agree to a written request to extend

the statute of limitations.

If, as a result of its audit, the private firm discovers that the taxpayer is owed a refund by or may owe tax to a client local government, the firm must notify both the taxpayer and the local government of this fact in writing. The notice must include the estimated amount of the refund or the tax owed and must advise the taxpayer of the general procedure for claiming a refund or paying the tax. If the firm willfully violates this provision and the taxpayer ultimately receives a refund or pays a tax of more than $100, the firm must forfeit its license for six months. Additionally, each examiner who participated in the audit but failed to advise the firm of the refund or tax liability shall forfeit their license for six months. The firm or examiner must then apply to be reinstated.

Auditor Certification and Licensing – Sections 40-2A-14 and -15

The Alabama Local Tax Institute of Standards and Training (the board) must certify all auditors employed by a private firm. The board consists of six members. The League appoints three members, as does the Association of County Commissions of Alabama.

The board is responsible for developing a certification program for private firm auditors. The program must require a minimum of at least two years of governmental examining experience or a bachelor's degree in accounting from an accredited university or college and completion of the certification program developed by the board. The program must also provide for continuing education rules similar to those imposed by the State Board of Public Accountancy.

The certification requirements apply only to examiners employed by a private auditing and collecting firms. They do not apply to municipal employees. Certified public accountants and public accountants who are licensed by the State Board of Public Accountancy are exempt from the certification requirements and any separate continuing professional education requirements. However, when a certified public accounting or public accounting firm is employed to conduct local tax examinations for the first time by a self-administered local government, the firm must notify the board in writing.

Once the board develops its preliminary program, copies of it will be distributed to interested agencies, including all counties and municipalities. Comments must be submitted to the board in writing within 45 days. Following this period, the board will adopt a final examiner certification program.

Examiners who are employed by a private firm on the date Act II becomes law have two years from the date the certification program is finalized to obtain the required certification. Examiners may continue to conduct examinations during this two-year period.

The board may contract out the examiner certification program to any organization the board believes can and will conduct the program in a manner consistent with legal requirements. Any organization operating the program pursuant to a contract must conduct the program subject to rules and regulations issued by the board.

Either the board or an agent conducting the program by contract may charge examiners a registration fee to obtain certification.

Audit Procedures – Section 40-2A-15(g)

The board also has the responsibility for developing a standardized procedure that will be followed by all municipal county or private examiners when examining a taxpayer's books and records. This procedure may not conflict with the Taxpayer's Bill of Rights.

License Fees – Section 40-12-43.1

Every private auditing and collecting firm is required to pay an annual state license fee of $25 no later than October 1 of each year or within 30 days of entering into a contract with a county or municipality. If the board has hired more than one examiner, each examiner must pay a separate fee of $25. These funds shall be appropriated by the state comptroller to the board for administration of the examiner certification program.

Bonding Requirements – 40-2A-14

Private firms must maintain fidelity bonds on each examiner. A private firm may not employ examiners who are not bonded or who have not received or maintained certification from the board. A violation of these requirements shall:

1. automatically terminate any contract or arrangement with a self-administered local government;
2. void any assessment or proposed assessment issued by a self-administered local government or its agent as a result of any audit conducted, in whole or in part, by the examiner; however, the local government may send a qualified examiner to re-examine the taxpayer's book and records, even though the required waiting period has not expired, or the applicable statute of limitations has expired with respect to the period at issue; and

3. cause the private firm to forfeit its license for six months.

Certified public accountants are exempt from the bonding requirements.

Reinstatement of Certification – 40-2A-14(d)

Any private firm that has forfeited its license, must apply for reinstatement pursuant to Section 40-12-43.1, and repay the required state licenses.

Sales Taxes and Excise Taxes

There has been a long-standing practice in Alabama of allowing sales taxes to be applied to the total cost of products even if those products carry an excise tax. In the early 1990s, this practice was challenged in the courts. Act 92-343 allows retailers to continue to charge taxes on the total cost of products purchased whether or not an excise tax is attached to any or all of the products.

Public Records Issues -- Availability of State Sales Tax Data -- Regulation 810-14-1-.29

Section 11-51-181, Code of Alabama 1975, gives a municipality access to state sales tax data. This legislation was sponsored by the Alabama League of Municipalities for license enforcement purposes and as a method of checking on payments of municipal sales taxes when municipalities levy such taxes. It makes available the sales tax returns of local businesses filed each month with the Department of Revenue.

Because of the Taxpayer's Bill of Rights, accessing sales and use tax information is now more complicated due to the privacy concerns raised by Section 40-2A-10 of the Code. In response to this law, DOR has adopted regulation 810-14-1-.29 to govern the disclosure and exchange of sales and use tax information. The pertinent portions of this regulation provide:

- Only the taxpayer or the taxpayer's representative can release information in a sales or use tax return without the expressed written permission of the commissioner of revenue or pursuant to some other provision of law. The law does, though, provide for the exchange of information under certain circumstances. This regulation was designed to govern inspection of tax returns and return information by persons other than DOR, unless some other law controls access.
- A return is: "Any tax or information return or report, declaration of estimated tax, claim or petition for refund or credit, or petition for reassessment or protest that is required by, provided for or permitted under the provisions of the tax laws of the state."
- "Return information" includes almost any information that identifies the taxpayer.
- The procedure for requesting tax returns or return information is:
- The agreement to allow inspection must be approved by the commissioner or his delegate.
- The agreement may provide for inspection or exchange of a specific return, or for the regular or routine exchange of returns on the basis as the parties agree.
- Unless prior arrangements have been made and approved by the commissioner or his delegate, requests for inspection must be in writing or verifiable electronic means and must indicate, if available:
    - The tax administration reason for the exchange;
    - The name and address of each taxpayer for whom information is requested;
    - The taxpayer's social security number and/or federal ID number, if available;
    - The inclusive dates for tax information requested; and
    - Any other information that may help facilitate the exchange, such as the taxpayer's legal name, business name, address and/or a Department tax ID number.
- The agreement is valid for the duration spelled out in the agreement but may be cancelled. The agreement is void if confidentiality is violated.
- The authorized person (tax administrator viewing or obtaining the information) must sign a non-employee confidentiality and disclosure statement.

Officials and employees must always keep in mind, as discussed previously, that a violation of the confidentiality provisions in the Taxpayer's Bill of Rights is a Class A misdemeanor. This means that anyone (including municipal officials

and employees) who reveals any information on a taxpayer's sales or use tax return or information used for computing the amount of tax owed has committed a crime.

Sales Taxes on Motor Vehicles

Sections 11-51-201, 11-51-203, 40-12-4, 40-23-101, 40-23-102, 40-23-104 and 40-29-115, Code of Alabama 1975 govern the payment of sales and use taxes due on sales of motor vehicles. Under the provisions of the law, vehicle dealers are required to show on their invoices the rate and amount of municipal and county sales taxes collected at the time of purchase. When a purchaser of a vehicle goes to transfer the vehicle in his or her name, the clerk will ask to see the bill of sale. If the dealer has collected municipal and county sales taxes for the jurisdiction where the vehicle was purchased, no additional tax will be due. If the municipal and county taxes were not collected at the time of sale, the purchaser will be required to pay the use taxes on the vehicle in effect for the municipality and the county of the purchaser's residence. AGO 1995-125 states that sales taxes must be collected by the dealer at the point of purchase on vehicles sold inside a municipality even though the vehicle will be registered in a municipality and county in Alabama different from the purchase site.

The law requires the county tax collector to remit all county and municipal sales, gross receipts and use taxes collected pursuant to the act directly to the appropriate county or municipal tax recipient within 20 days following the last day of the month in which such taxes were collected.

For collecting the county or municipal sales tax pursuant to this legislation, the tax collector shall be entitled to a fee from the recipient county or municipality in an amount equal to five percent of all revenue collected each month. The fees allowed shall be deducted from the tax collections for each tax recipient each month and the remainder of the collections shall be remitted to each tax recipient. The law provides that the fee shall be disallowed with respect to any tax collected for the county or municipality unless the collections are remitted to the appropriate county or municipality within the time allowed by law.

For a city or town to collect taxes on vehicles purchased by local citizens from dealers located outside the municipality, the following criteria must be met:

First, the dealers must not have collected municipal sales taxes from the purchaser for the municipality where the dealer is located.

Second, the city or town of the purchaser's residence must have a use tax in place.

Cities and towns with a gross receipts tax in the nature of a sales tax will not be able to take advantage of this provision of the legislation without changing to a "true" sales and use tax.

Motor Boat Sales and Use Tax

Sections 40-23-100 through 40-23-108, and Section 33-5-11, Code of Alabama 1975 levy a sales and use tax on certain motorboats and provide for the collection of that tax. The motorboats intended to be covered by these provisions include boats with one or more built-in motors or a boat with an outboard type of motor or motors which are intended to be permanently attached rather than readily removable.

Sample ordinances to be used in adopting any of these taxes may be obtained from the Sales and Use Tax Division of the State Department of Revenue.

Police Jurisdiction

Municipalities have the authority to assess, by ordinance, a sales and use tax that must not exceed one-half of the levy inside the municipal limits. This authority was upheld in *Hoover v. Oliver & Wright Motors, Inc.*, 730 So.2d 608 (Ala. 1999), *cert. denied*, 528 U.S. 868 (1999). Additionally, although licenses collected in the police jurisdiction must be spent to provide services in the police jurisdiction, at least one case has indicated that sales and use tax revenue collected in the police jurisdiction do not. ***State Dept. of Revenue v. Taft Coal Sales and Associates, Inc.***, 801 So.2d 838 (Ala. Civ. App. 2001). For more information about sales and use taxes and the police jurisdiction, please see the article entitled "The Municipal Police Jurisdiction" in this publication.

Sales Tax Holiday

Sections 40-23-210 through 213 of the Code of Alabama 1975, provide for a sales tax holiday to exempt certain covered items from the state sales and use tax during the first full weekend of August of each year. Any county or municipality may, by resolution or ordinance adopted at least 30 days prior to the first full weekend of August, provide for the exemption of covered items from paying county or municipal sales and use taxes during a period commencing at 12:01 a.m. on the first Friday in August of each year and ending at twelve midnight the following Sunday under the same terms, conditions, and

definitions as provided for the state sales tax holiday. Municipalities and counties are prohibited from providing for such exemptions during any period other than the first full weekend in August. Section 40-23-213, Code of Alabama 1975.

Section 40-23-233, Code of Alabama 1975 also exempts certain covered items from the state sales and use tax for the first full weekend of July and the last full weekend of February of each year. Any county or municipality may, by resolution or ordinance adopted at least 14 days prior to the first full weekend of July in 2012 and at least 30 days prior to the last full weekend of February in subsequent years, provide for the exemption of covered items from paying county or municipal sales and use taxes during a period commencing at 12:01 a.m. on the first Friday in July in 2012, and the Friday of the last full weekend of February in subsequent years, and ending at twelve midnight the following Sunday under the same terms, conditions, and definitions as provided for the state sales tax holiday. Municipalities and counties are prohibited from providing for a sales and use tax exemption during any period of the year that is not designated as a sales tax holiday. Section 40-23-233, Code of Alabama 1975.

One Spot Collection

Section 40-23-240, et seq., Code of Alabama 1975 requires the Alabama Department of Revenue to develop and make available to taxpayers an electronic single point of filing for state, county and/or municipal sales, use, and rental taxes. The system is known as the Optional Network Election for Single Point Online Transactions or "ONE SPOT." There is no charge to local taxing jurisdictions for utilization of the One Spot system by taxpayers or the local taxing jurisdiction or its designee.

My Alabama Taxes (MAT) is the State's electronic filing and remittance system used today for the filing of state and some city and county sales, use, rental, and lodgings taxes. Since October 1, 2013, Alabama retailers have been able to file and pay all city and county sales, use, and rental taxes using One Spot. For more information about One Spot, visit http://revenue.alabama.gov/salestax/oslclindex.cfm.

The use of the One Spot system requires the use of electronic payments. The returns and payments are sent to the local government or their tax administrator.

Remote Sales Tax Remittance

The "Simplified Sellers Use Tax Remittance Act", codified at Sections 40-23-191 to 199.3, Code of Alabama 1975, allows "eligible sellers" to participate in a program to collect, report and remit a flat 8 percent Simplified Sellers Use Tax (SSUT) on sales made into Alabama. An "eligible seller" is one that sells tangible personal property or a service into Alabama from an inventory or location outside the state and who has no physical presence and is not otherwise required by law to collect tax on sales made into the state. The term also includes "marketplace facilitators" as defined in Section 40-23-199.2(a)(3), Code of Alabama 1975, for all sales made through the marketplace facilitator's marketplace by or on behalf of a marketplace seller.

The proceeds from the SSUT 8 percent tax are distributed as follows:

- 50% is deposited to the State Treasury and allocated 75 percent to the General Fund and 25% to the Education Trust Fund.
- The remaining 50% shall be distributed 60% to each municipality in the state on the basis of the ratio of the population of each municipality to the total population of all municipalities in the state as determined in the most recent federal census prior to distribution and the remaining 40% to each county in the state on the basis of the ratio of the population of each county to the total population of all counties in the state as determined in the most recent federal census prior to distribution.

The department of revenue will provide a list of SSUT account holders on the website disclosing the start and cease date of participants in the program, as applicable. This list is provided so that the local governments are aware of the taxpayers who fall under the protection of the SSUT Act.

Attorney General's Opinions and Cases

- A self-administered municipality may provide the same or a smaller discount for the collection of sales and use taxes than that provided by the Department of Revenue. The due date for sales taxes must comply with the law. A self-administered municipality may adopt filing and remittance policies similar to those adopted by DOR and may allow taxpayers who are liable for an average of less than $200 per month during the preceding calendar year, to file sales tax returns on a basis less frequently than quarterly. AGO 1998-209.
- A municipal utilities board created pursuant to Article 9, Chapter 50, Title 11, Code of
- Alabama 1975, is exempt from sales, use and gross receipts taxes in the nature of a sales tax by Section 11-50-322. AGO 1999-007.

- If a municipality's gross receipts tax is in the nature of a sales tax as defined in Section
- 40-2A-3(a) of the Code of Alabama 1975, then Section 40-23-2.1 of the Code of Alabama 1975, prohibits a second municipality from collecting its sales tax on a transaction where a vendor in the first municipality collected and remitted the gross receipts tax from a consumer/purchaser. AGO 2002-115.
- If an out-of-state company does not have a physical presence in a county or in the state of
- Alabama, then the county or state cannot subject that company to local sales or use taxes. AGO 2001-165.
- The Alabama Court of Civil Appeals held that the state is entitled to an injunction
- preventing a business from operating until delinquent sales taxes are paid. In this case the owner did not pay taxes when due and there was no evidence of any reason to justify his failure to pay the tax. *State v. Lewi*s, 832 So.2d 81 (Ala. Civ. App. 2002).
- A municipality may impose a sales, use, or gross receipts tax upon a waterworks board
- incorporated pursuant to Section 11-50-230, Code of Alabama 1975. AGO 2004-091.
- A city can impose a gross receipts license movie ticket tax pursuant to Section 11-51-
- 200, and this tax can be levied as a general sales tax on places of amusement or entertainment as in Section 40-23-2, Code of Alabama 1975. AGO 2007-107.
- The Local Tax Simplification Act superseded a local act and required the local Tax Board
- to offer an administrative-appeal procedure like that set forth in the Alabama Taxpayers' Bill of Rights. This allowed the taxpayer to pursue an administrative appeal before the time began to run under the local act for filing a notice of appeal in the circuit court. *Pittsburg & Midway Coal Min. Co. v. Tuscaloosa County*, 994 So.2d 250 (Ala.2008).
- Sections 11-51-200 and 11-51-201 of the Code of Alabama prohibit a municipality from
- exempting food from the local sales tax as there is no corresponding exemption of food from the state sales tax levy. AGO 2009-092.
- The City of Boaz, located in Marshall County recently annexed the Town of
- Mountainboro, located in Etowah County. Even though the Town of Mountainboro was annexed by the City of Boaz, the area is still located in Etowah County. Consequently, the Etowah County Commission may still administer and collect a sales tax from areas within the former Town of Mountainboro that are located in Etowah County. AGO 2010-031.
- Section 40-9-25.2 of the Code of Alabama exempts Habitat for Humanity Organizations
- and West Alabama Youth Services, Inc. (WAYS) from "paying state, county, and municipal sales and use taxes" as well as exempting "all property owned and used by the organization" from state, county, and local ad valorem taxation. Accordingly sales made to these organizations and sales made by these organizations are exempt from sales and use tax. AGO 2010-038.
- Alabama's sales and use tax was "another tax" under catch-all subsection of 4–R Act, and
- Alabama's sales and use tax was subject to challenge under the 4–R Act as "tax that discriminate[d] against a rail carrier, *CSX Transp., Inc. v. Alabama Dept. of Revenue* 131 S.Ct. 1101 (U.S.2011).
- Peanuts provided in a restaurant were "resold" to customers, and, thus, the restaurant
- was not liable for use tax based on its purchase of peanuts in bulk, even though the peanuts were not separately listed and priced on the menu or customers' bills, rather, the restaurant charged customers for the average incremental cost of peanuts as part of the cost of meals. *Alabama Dept. of Revenue v. Logan's Roadhouse, Inc.*, 85 So.3d 403 (Ala.Civ.App.2011)
- The sale of admission tickets to the Champions Tour golf tournament, which is conducted
- as a Champions Tour event by PGA Tour, Inc., is exempt from state, county, and municipal sales taxes under section 40-23-5(q) of the Code of Alabama, notwithstanding the incorrect reference in the Code section to "Senior PGA" as "Senior Professional Golfers Association." AGO 2012-061.
- The Birmingham-Jefferson Civic Center is a governmental entity as defined in Act 2013-
- 205, which is codified in section 40-9-14.1 of the Code of Alabama and is exempt from paying sales and use tax for construction projects. AGO 2014-066.

- The collection fees under section 11-51-203(b) of the Code of Alabama applies only to
- the collection fees on vehicles sold by dealers not licensed in Alabama or by licensed dealers who failed to collect sales taxes at the point of sale and should be collected in the amount specified in section 40-23-107. The collection of fees, generally, under section 11-51-200, et seq. of the Code should be in the graduated amount specified in section 11-51-203(c). AGO 2015-031.
- City's failure to follow the required administrative procedures of the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act (TBOR) prior to suing a limited liability company (LLC) for unpaid municipal sales taxes, business license and occupational taxes deprived the trial court of subject matter jurisdiction over the claim regarding sales tax, but it did not deprive the trial court of subject matter jurisdiction for the claims for the unpaid business license and occupational taxes. *Bonedaddy's of Lee Branch v. City of Birmingham*, 192 So.3d 1151 (Ala. 2015).
- Local tax is due in the jurisdiction where title to the goods is transferred, which will be at the time of delivery, unless explicitly agreed otherwise. If parties to a retail sales transaction are not using a common carrier for deliver and so agree to allow title to transfer at the place of the sale, then local tax is due in the jurisdiction where the sale takes place. If, however, common carrier is the method of delivery, then local tax is due in the jurisdiction where delivery is completed, regardless of any agreement to allow title to transfer at the place of the sale. AGO 2017-001.
- Pursuant to Section 11-51-204 of the Code of Alabama, a city is authorized to pass an ordinance that is similar to or expressly adopts the provisions in either Section 40-1-2(c) or 40-29-20 of the Code of Alabama, which would authorize the filing of a Certificate of Taxes Due to collect sales and use, but not business license, tax. The city may not use Section 40-1-7 of the Code of Alabama to hold an agent of a company personally liable for the taxes due by the company. AGO 2017-021.

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