

# State and Local Tax Bulletin

November 20, 2009  
Alabama Edition



## Class Action Suit Alleges Private Auditing Firm Committed Multiple Violations of Taxpayers' Bill of Rights

By Bruce P. Ely and James E. Long, Jr.

### Upcoming Seminars Involving Members Of Our SALT Practice Group

#### December 14-15, 2009

The 28th NYU Institute on State and Local Taxation will be held at The Grand Hyatt, New York. Bruce Ely will serve on a panel providing an in-depth review of significant tax developments from regions across the country, entitled: "What's Happening Everywhere Today?" For more information, please visit [www.scps.nyu.edu/salt](http://www.scps.nyu.edu/salt).

#### January 21-23, 2010

American Bar Association Tax Section Winter Meeting, Grand Hyatt Hotel, San Antonio, Texas. Bruce Ely and Will Thistle will be speakers in a panel presentation on "State Administrative Procedure Acts: Procedural Avenues to Attack Faulty Regulations and Assessments." For more information, please visit the ABA website: [www.abanet.org/tax/meetings](http://www.abanet.org/tax/meetings).

#### January 28-29, 2010

Council On State Taxation 2010 SALT Basics School, Georgia Tech Hotel & Conference Center, Atlanta, Georgia. Chris Grissom will be a co-panelist in a presentation on preparing internal research memoranda and the interplay with the attorney-client privilege and work product doctrine. For more information, please visit the COST website: [www.statetax.org](http://www.statetax.org).

Two Alabama taxpayers have filed a very detailed class action suit against the leading private contract auditing firm in Alabama, PRA Government Services, LLC, which conducts business as "Revenue Discovery Systems" or "AlaTax", and its affiliates ("AlaTax"). The 81 page complaint alleges several violations by AlaTax or its auditors of the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act ("TBOR"). *Washer & Refrigeration Supply Co. v. PRA Government Services, LLC*, Montgomery Co. Cir. Ct. CV 2009-901297 (Nov. 4, 2009). The Plaintiffs seek certification of a class that would include all Alabama citizens and businesses that have remitted local taxes to AlaTax, or were audited by AlaTax, or participated in an administrative review conducted by AlaTax.

Alabama is one of the few states that allows its local governments (counties and municipalities) to both levy and collect their local sales, use, rental and lodging taxes, either through self-administration, using the Alabama Department of Revenue as agent, or employing a private auditing firm or even another local jurisdiction as agent. AlaTax collects and administers various taxes on behalf of approximately 250 local jurisdictions, more than any other private auditing firm in Alabama. Private auditing firms, as well as counties and municipalities, are subject to the TBOR by virtue of the Local Tax Simplification Act of 1998. See *GMAC v. City of Red Bay*, 894 So. 2d 650 (Ala. 2004).

The Plaintiffs allege that AlaTax has violated several aspects of the TBOR, including: failing to notify taxpayers who have overpaid taxes of the procedures for filing a refund claim; failing to notify taxpayers of the right to an administrative appeal (in lieu of filing an appeal in circuit court); failing to comply with auditor surety bonding requirements; entering into contingency fee auditing contracts; and rewarding its employees and independent contractors through incentive bonuses based on tax collections or assessments. For example, the Plaintiffs allege that a so-called "Tax Revenue Enhancement Agreement" exists between AlaTax and numerous local jurisdictions, which provides for compensation to AlaTax for its examination services equal to "fifty percent (50%) of business license revenue collected by AlaTax." The Plaintiffs allege that these contingency fee arrangements violate taxpayers' due process rights and create a biased administrative appeal process, citing evidence that taxpayers obtain refunds in approximately 45% of the appeals before the Department of Revenue's Administrative Law Division, compared to a .2% success rate before AlaTax hearing officers. The

*continued on page 2*

Plaintiffs further allege that TBOR does not authorize AlaTax employees to execute preliminary or final assessments against taxpayers or to conduct administrative hearings on behalf of its local government clients.

The Plaintiffs request several counts of relief in their Complaint, including a declaratory judgment that AlaTax's contracts with its local government clients are void and unenforceable under the TBOR, an injunction against AlaTax from engaging in any conduct that is found to violate the TBOR, and refunds of all fees collected by AlaTax in violation of the TBOR. The Plaintiffs are represented by Brent Irby and Chip McCallum, with McCallum, Hoagland, Cook & Irby, LLP, and Dale Marsh, with Marsh, Cotter & Stewart, LLP. The case has been assigned to Montgomery County Circuit Court Judge Tracey S. McCooey. The outcome of this class action suit is being closely monitored by businesses, practitioners and several professional associations.

### **Bradley Arant Boulton Cummings LLP Office Locations:**

#### **ALABAMA**

One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35023  
(205) 521-8000

200 Clinton Avenue West, Suite 900  
Huntsville, AL 35801  
(256) 517-5100

The Alabama Center for Commerce  
401 Adams Avenue, Suite 780  
Montgomery, AL 36104  
(334) 956-7700

#### **MISSISSIPPI**

188 E. Capitol Street, Suite 450  
Jackson, MS 39201  
(601) 948-8000

#### **NORTH CAROLINA**

100 North Tryon Street, Suite 2690  
Charlotte, NC 28202  
(704) 338-6000

#### **TENNESSEE**

1600 Division Street, Suite 700  
Nashville, TN 37203  
(615) 244-2582

#### **WASHINGTON, DC**

1133 Connecticut Avenue NW,  
12th Floor  
Washington, DC 20036  
(202) 393-7150

**Please visit our new website at [www.babc.com](http://www.babc.com)**

*This newsletter is sent to our friends as a courtesy of Bradley Arant Boulton Cummings LLP. If you would prefer not to receive future emailings of this type, please email our practice group assistant, Sherry Barber, at [sbarber@babc.com](mailto:sbarber@babc.com).*

This newsletter is a periodic publication of Bradley Arant Boulton Cummings LLP and should not be construed as legal advice or legal opinions on any specific facts or circumstances. The contents are intended for general information only, and you are urged to consult your own lawyer or other tax advisor concerning your own situation and any specific legal questions you may have. For further information about these contents, please contact your lawyer or any of the lawyers in our practice group.

The Alabama State Bar requires the following disclosure: "No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers."

©2009 Bradley Arant Boulton Cummings LLP

### **SALT Practice Group:**

Bruce P. Ely, Chair  
(205) 521-8366  
[bely@babc.com](mailto:bely@babc.com)

Joseph W. Gibbs  
(615) 252-2317  
[jgibbs@babc.com](mailto:jgibbs@babc.com)

W. Stanley Gregory  
(334) 956-7604  
[sgregory@babc.com](mailto:sgregory@babc.com)

Christopher R. Grissom  
(205) 521-8514  
[cgrissom@babc.com](mailto:cgrissom@babc.com)

K. Wood Herren  
(205) 521-8505  
[wherren@babc.com](mailto:wherren@babc.com)

Matthew S. Houser  
(205) 521-8680  
[mhouser@babc.com](mailto:mhouser@babc.com)

James E. Long, Jr.  
(205) 521-8626  
[jelong@babc.com](mailto:jelong@babc.com)

Patricia Head Moskal  
(615) 252-2369  
[pmoskal@babc.com](mailto:pmoskal@babc.com)

Brian S. Shelton  
(615) 252-2313  
[bshelton@babc.com](mailto:bshelton@babc.com)

William T. Thistle, II  
(205) 521-8985  
[wthistle@babc.com](mailto:wthistle@babc.com)

Robert D. Thorington  
(334) 956-7609  
[rthorington@babc.com](mailto:rthorington@babc.com)

Robert C. Walthall  
(205) 521-8308  
[rwalthall@babc.com](mailto:rwalthall@babc.com)

[www.babc.com](http://www.babc.com)