

State and Local Tax Bulletin

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Alabama Edition



Alabama's Largest Business and Trade Associations Announce Their 2010 Tax Legislative Agendas

By: Bruce P. Ely & William T. Thistle

Upcoming Seminars Involving Members Of Our SALT Practice Group

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.

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.

February 2, 2010

Bruce Ely and Jimmy Long will be speaking to the Birmingham Tax Forum on February 2 on the topic of "Recent Alabama Legislative Developments and Prognostications". The Forum is held at the Summit Club, atop the Regions-Harbert Building in downtown Birmingham.

In preparation for the 2010 regular session of the Alabama Legislature, which is set to begin tomorrow night, several of the State's most prominent business and trade organizations have released their 2010 legislative agendas, featuring both new and renewed tax initiatives. Most notably, the 5,000 member Business Council of Alabama (www.bcatoday.org) and the 4,000+ member Alabama Retail Association (www.alabamaretail.org) recently announced their 2010 legislative agendas, with each placing significant emphasis on state and local tax proposals.

Both the BCA and the ARA reaffirmed their support for legislation creating an independent tax tribunal for state and local tax appeals and a streamlined sales/use tax. The BCA and the Alabama Society of Certified Public Accountants (www.ascpa.org) both support enacting the Alabama Taxpayers' Bill of Rights II legislation, as described below, and both groups also indicated they will closely monitor legislative efforts to regulate the standards for Alabama income tax return preparers.

In addition, all 3 groups stated that they intend to oppose any legislation imposing mandatory unitary combined reporting on corporate taxpayers, which the powerful Alabama Education Association teachers' union advocated last year. The AEA recently announced that it will advocate legislation this session designed to close "corporate tax loopholes," which may include a renewed effort to pass a MUCR bill.

This year, business and trade associations around the country are paying special attention to any form of tax increase targeting small businesses. Rosemary Elebash, the Alabama State Director of the National Federation of Independent Businesses (www.nfib.com/alabama), commented that the NFIB believes Alabama's "unemployment tax increase, which went into effect on January 1, 2010, will probably discourage any additional hiring for most of the state's small businesses." This may explain why the BCA, the ARA, and the NFIB advocate an increased income tax deduction for small businesses that provide their employees with healthcare coverage, as discussed below.

Business Council of Alabama Tax Agenda

With the BCA coming off a successful 2009 legislative session, Victor Vernon, the Director of Legislative Policy for the group, reviewed their 2010 state and local tax legislative agenda, stating that the "BCA has adopted an ambitious and comprehensive

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legislative agenda for 2010 that is intended to protect the important pro-business gains that have been made, because those gains provide the essential conditions needed for economic recovery and job growth to succeed.”

In 2010, the BCA will actively work to:

- Create the **Alabama Tax Appeals Commission** (“ATAC”) as an independent state tax agency, headed by a judge selected in a non-partisan manner who has specific training in state and local taxation. The legislation would also abolish the Administrative Law Division of the Alabama Department of Revenue and the current Chief ALJ, the well-respected Judge Bill Thompson, would become the chief judge of the ATAC. The bill would parallel the ABA Tax Section’s Model State Administrative Tax Tribunal Act.
- Enact the **Alabama Taxpayers’ Bill of Rights II** legislation (“TBOR II”), an update and expansion of the original landmark legislation enacted in 1992 that, among other things, will extend the appeal deadlines for taxpayers from 30 days to 60 days.
- Increase the **Small Business Healthcare Deduction** from 150 percent to 200 percent in coordination with the BCA Small Business and Health Care Committees.

In 2010, the BCA will support efforts to:

- Resolve the Alabama Department of Revenue’s problems and litigation over its “**Gross Income Regulation**,” which affects partnerships, S corporations, LLCs, and other “pass-through” entities that have resident owners but earn income both from within and outside of Alabama. The legislation would (1) prospectively recognize the non-Alabama income, and (2) provide a pass-through tax credit for income/franchise taxes paid to other states and foreign countries by the entity on behalf of its owners.
- Streamline and simplify Alabama’s sales/use tax system so that in-state and out-of-state retailers are on a level playing field.
- Establish a research and development income tax credit, parallel to the federal R&D tax credit.
- Reform the state/county business license system by establishing an online filing system that will maintain the currently active business license categories and by creating a nominal, catch-all business license for all other businesses.
- Offset the burden of state sales tax on groceries for low-income households with individual income tax rebates or refundable tax credits—similar to legislation sponsored by House Republicans during the last regular session.

In 2010, the BCA will oppose:

- Legislation establishing **mandatory unitary combined reporting** in Alabama.

In 2010, the BCA will monitor efforts to:

- Regulate and set minimum **standards for individual income tax preparers**.

Alabama Retail Association Tax Agenda

The ARA represents both independent merchants and national companies operating in Alabama that sell food, clothing, furniture, and other general merchandise at more than 6,000 locations throughout the state; its membership accounts for more than 75 percent of the total annual retail sales in Alabama.

Tax legislation will be of particular importance to the ARA this year, as retailers are facing another year in which consumer spending may remain at relatively low levels. With regard to the ARA’s 2010 legislative agenda, Rick Brown, President of the ARA, commented: “The Alabama Retail Association’s primary focus during the 2010 legislative session will be to protect retailers from any attempt by the Alabama Legislature to raise revenue by taxing retailers and their customers. Giving consumers another reason to cut back on their spending is the last thing retailers want to see happen while sales are already down.”

In 2010, the ARA intends to lobby for the following tax legislation:

- **Increased Healthcare Deduction for Small Businesses:** Like the BCA and NFIB, ARA will support legislation designed to increase the income tax deduction for small businesses that provide healthcare coverage for their employees from 150 percent to 200 percent of the premiums paid.
- **Streamlined Sales/Use Tax:** The ARA has long supported legislation that would streamline the state and local sales tax, and level the playing field for in-state and out-of-state retailers. This legislation would provide a simplified sales tax system that enables the collection of sales taxes to be more manageable for businesses. Although traditional retailers must collect and remit taxes at the point of sale, online retailers generally must only collect taxes in states where they have a physical presence. ARA believes this practice gives the online and other remote retailers a competitive advantage.
- **Alabama Tax Appeals Commission:** As in prior years, the ARA will support legislation to create an independent state tax court or agency headed by a judge with specific training in the area of state and local taxation. This legislation would eliminate the Alabama Department of Revenue’s

Administrative Law Division, creating in its place an ATAC as a separate division under the Office of the Attorney General or as a stand-alone state agency.

In 2010, the ARA will oppose the following tax legislation:

- **“Band-aid or quick fix tax schemes”** that single out one particular industry or segment of business for punitive tax increases. The ARA vehemently opposes any patchwork tax efforts.
- **Mandatory unitary combined reporting** for corporate taxpayers.

This legislative session could be especially contentious due to large budget deficits in both the Education Trust Fund and the General Fund, which will undoubtedly fuel calls for various tax increases, while most legislators are up for re-election and the primaries are in June. If you have any questions regarding these proposals, please don't hesitate to contact the Alabama members of our SALT Practice Group, or either George Harris (gbharris@babbc.com) or David Stewart (dstewart@babbc.com), who lead our firm's Governmental Affairs Practice Group in Alabama. Members of the SALT Practice Group are some of the principal authors of both the Alabama Taxpayers' Bill of Rights II and the Alabama Tax Appeals Commission legislation.

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