

# State and Local Tax Bulletin

January 20, 2011  
Alabama Edition



## Governor Bentley Pledges No New Taxes - But Only Time will Tell

By Bruce P. Ely and J. Sims Rhyne, III

On January 17, Dr. Robert Bentley was inaugurated as Alabama's 53<sup>rd</sup> governor, with the hopes that, as in his previous profession, he will be able to help cure some of the state's economic and fiscal ills. For the past eight years, Dr. Bentley was a state representative from Tuscaloosa/Northport, serving on, among other committees, the powerful House Education and Appropriations Committee. Bentley takes over as the state prepares for the loss of up to \$1 billion in federal stimulus money and other one-time windfalls, in addition to a looming budget crisis. Although Bentley faces an uphill battle with the state's economy, he'll have something a Republican governor hasn't had in Alabama in 136 years: a Republican party that controls both houses of the legislature with a 60 percent majority.

Part of the fiscal crisis traces back to the Education Trust Fund budget adopted by the Legislature last year. The Democrat-controlled Legislature, at the urging of then Governor Bob Riley, adopted a \$5.5 billion education budget for the fiscal year ending September 30, 2011--a 5.2 percent increase over last fiscal year with an extremely rosy outlook that tax collections would actually increase to match the budget expectations. Governor Bentley has already warned that proration will likely be declared for both the Education and General Fund budgets—and very soon. Proration is a constitutionally-mandated action taken to cut spending, across-the-board, when anticipated tax revenues do not match the state's budget.

The Governor has sworn off new taxes as a cure to the budget crisis, stating that he will "absolutely not" raise taxes, which likely means budget cuts. Although Bentley is strongly opposed to tax increases, he has indicated on several occasions that he favors aggressive enforcement of pre-existing taxes that have gone uncollected. Bentley has pledged to work with the Legislature to close "tax loopholes," including the collection of unpaid sales and use taxes on purchases of goods made online or by mail order catalog. According to the Legislative Fiscal Office, the collection of these taxes could generate \$100 million for the state, annually, not counting needed revenues for the local governments of that much or more. This is not a tax increase, according to Bentley, because Alabama law already requires residents to pay consumer use tax on items purchased out-of-state without payment of sales tax. The states have attacked this problem differently, some through legislation, some through litigation, and others merely hoping that Congress will finally act under its Commerce Clause powers.

One possibility being considered by Governor Bentley and his new staff is the state's adoption of the Streamlined Sales and Use Tax Agreement. As readers may recall, the SST Agreement is the result of a cooperative effort between 44 states and the District of Columbia to simplify sales and use tax collections and administration by the states. The Agreement eases the costs and administrative burdens on retailers that collect sales taxes, and encourages "remote sellers" selling over the Internet and by mail order to collect tax on sales to customers living in Streamlined member states. With its fragmented local sales/use tax system, Alabama is truly the *poster-child* for SST.

The Agreement also would help ensure there is a more level playing field for bricks-and-mortar retailers in the state, as well as out-of-state e-tailers who are already collecting and remitting seller's use tax on sales to Alabama businesses

and residents. Twenty-four states, most recently Georgia, have adopted the Agreement, with nine more states, including Florida, recently introducing conforming legislation.

## Governor Bentley Appoints New Commissioner of Revenue

Governor Bentley began his first full day as governor filling out his Cabinet with five new appointees. Among these new appointees is Julie Magee, who will serve as Commissioner of the Alabama Department of Revenue. During Bentley's campaign for governor, Ms. Magee served as his Mobile campaign chairwomen and staunch supporter, successfully defending Bentley from various attacks and advocating his political positions. She is a small businessperson, being the co-owner of a multi-office insurance agency headquartered in Mobile, is married, and a graduate of the University of South Alabama. We wish her the greatest success in her new role.

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

#### January 20-22, 2011

The American Bar Association Section of Taxation, Midyear Meeting, will be held at the Boca Raton Resort and Club in Boca Raton, Florida. Bruce Ely will be co-speaking with Bahar Schippel of Snell & Wilmer and Michael McLoughlin of Reed Smith on *Series LLCs: No, It is Not a New T.V. Series*. For more information, visit [www.abanet.org/tax](http://www.abanet.org/tax).

#### January 28, 2011

The Council On State Taxation ("COST") 2011 SALT Basics School will be held at the Georgia Tech Hotel and Conference Center in Atlanta, Georgia on January 23-28, 2011. Chris Grissom will be speaking on *How to Research and Write a File Memo; Protecting Privilege*. For more information, visit [www.cost.org](http://www.cost.org).

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