



# State and Local Tax Alert

## Alabama Edition



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## Several Alabama Business and Professional Associations Announce Their 2012 Tax Legislative Agendas

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In preparation for the 2012 regular session of the Alabama Legislature, which begins on Tuesday, February 7, several of Alabama's most prominent business and trade organizations have finalized their 2012 legislative agendas. These agendas feature both new and renewed tax initiatives. Most notably, the 5,000-member Business Council of Alabama ("BCA") and the 4,000-member Alabama Retail Association ("ARA") have adopted aggressive tax legislative agendas that are to be commended.

Two leading professional organizations have also weighed in. The Alabama Society of CPAs ("ASCPA") has a narrowly-focused tax agenda this year but, like the BCA and ARA, it endorses the passage of the Alabama Taxpayers' Bill of Rights II ("TBOR II") legislation which is outlined below. That bill was pre-filed today and assigned House Bill No. 105. ASCPA President Jeannine Birmingham said, "Successful passage of this legislation would be a major step in addressing the concerns of tax practitioners to have an impartial and independent tax appeals process." The Alabama State Bar also recently endorsed this legislation, as has the 30-member Business Associations' Tax Coalition ("BATC"), the American Bar Association, and the Council On State Taxation ("COST"). The bill is sponsored by Representative Paul DeMarco (R-Homewood) and Senator Ben Brooks III (R-Mobile).

### Business Council of Alabama Tax Agenda

The BCA's broad-based 2012 tax legislative agenda renews its support for several legislative proposals from last year's session and adds some new ones. Following a successful 2011 session, the BCA lobbyists will likely hit the ground running.

#### During the 2012 regular session, the BCA says that it will actively work to:

- Enact legislation creating 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 simultaneously abolish the Administrative Law Division of the Alabama Department of Revenue ("ADOR"). The ATAC provisions are part of the TBOR II legislation, H.B. 105. The ATAC provisions in TBOR II are based in large part on the ABA's Model Independent Tax Tribunal Act, but also allow taxpayers to appeal final assessments of sales, use, rental, and lodgings taxes issued by *self-administered localities or their contract auditing firms* to the ATAC.
- Enact TBOR II, an update to and expansion of the original landmark legislation enacted in 1992, which among other things extends the appeal deadlines for taxpayers to 60 days and enhances "innocent spouse" relief.
- Enact agreed-upon legislation to resolve the ADOR's litigation over its so-called "Gross Income Regulations" that affect resident owners of S corporations, LLCs, and other pass-

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through entities that earn income both in- and outside of Alabama. The legislation would: (1) prospectively apportion non-Alabama income to Alabama; and (2) provide a pass-through tax credit to the entity's resident owners for certain income and modified gross receipts-based taxes paid to other states and foreign countries by the entity, whether on its own behalf or on behalf of its owners.

**During 2012, the BCA says it will support efforts to:**

- Streamline and simplify our sales/use tax system so that in-state and out-of-state retailers are on a level playing field and provide a single point of filing for state and all local sales and use tax returns.
- Enact the Alabama Retail Association's internet purchaser notification bill, commonly called the "pop-up bill."
- Enact legislation to establish a non-disclosure privilege for accountant workpapers.

**At the same time, the BCA says it will oppose:**

- Any effort to enact unitary combined reporting in Alabama.
- Any attempts by state taxing authorities to require disclosure, beyond those made in federal income tax returns, of uncertain tax positions or tax shelter items; with specific opposition to any state-specific disclosures.

### **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.

Despite the ongoing economic crisis and its effect on retailers, the ARA believes 2012 could be a great year for its members if certain state and federal legislation becomes law. ARA President Rick Brown said, "Retailers expect the Alabama legislature to move toward a single administrator for the state's sales and use taxes and are hopeful that Congress will finally end the online sales tax advantage. If both of those legislative measures pass, 2012 will be a fantastic year for retail."

**During 2012, the ARA intends to support:**

- Legislation to equalize sales and use tax collection and remittance obligations between brick-and-mortar retailers and those that are catalog- or internet-based.
- Legislation requiring remote retailers who do not collect Alabama's sales/use tax to notify Alabama consumers that a use tax is due and must be paid by the purchaser to the state of Alabama and its localities. The notification should be required on any website, catalog, invoice, and receipt generated by a remote retailer without physical nexus in Alabama if the retailer does not collect Alabama sales or use tax from Alabama consumers.
- Efforts to streamline and simplify the administration and remittance of sales and use taxes, especially administrative and legislative efforts that call for a single administrator.
- Creation of the ATAC as an independent state tax agency headed by a judge with specific training in the area of state and local taxation.
- Enactment of TBOR II, as described above.
- The BATC-supported legislative fix for the inequity in the state income tax law regarding what is considered gross income for resident owners of pass-through entities, such as limited partnerships, LLCs, and S corporations. This legislation should override and be more fair to taxpayers than the current ADOR Gross Income Regulations.

**During 2012, the ARA says it will oppose tax legislation:**

- Such as "Band-Aid" or quick-fix tax schemes, or singling-out one particular industry or segment of business for punitive tax increases; the ARA vehemently opposes any patchwork tax efforts.
- That would require unitary combined reporting for corporate taxpayers.

## Birmingham Business Alliance Tax Agenda

The Birmingham Business Alliance (“BBA”), the successor to the Birmingham Regional Chamber of Commerce and Metropolitan Development Board, also endorses several far-reaching tax legislative proposals, at both the state and federal levels. While the BBA’s tax agenda endorses several of the same proposals as the BCA and ARA, it also supports several measures not included in those agendas. Specifically, the BBA advocates efforts for Alabama to join the Streamlined Sales and Use Tax Agreement, as well as legislation being drafted jointly by the Alabama State Bar, the ADOR, and ASCPA that is designed to harmonize the state and local tax treatment of pass-through entities for sales, use, rental, and other non-income taxes.

The BBA also supports economic development in the state by advocating legislation aimed at creating an early stage investment tax credit, commonly known as an “angel investor” incentive, and a research and development (“R&D”) tax credit that parallels the federal counterpart. The BBA also says it supports several federal tax initiatives, specifically the Main Street Fairness Act or similar legislation and the Business Activity Tax Simplification Act (“BATSA”), while opposing any efforts by Congress to repeal the LIFO inventory method.

**Note:** several members of the firm’s SALT Practice Group and its Governmental Affairs Practice Group are involved in drafting or advocating the passage of many of the above legislative and administrative proposals. If you have any questions regarding the contents of this bulletin please contact any of the authors listed on page one; or either Dave Stewart or David Stewart of the Governmental Affairs Practice Group, [dave.stewart@babbc.com](mailto:dave.stewart@babbc.com) or [dstewart@babbc.com](mailto:dstewart@babbc.com).

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