



December 16, 2014

COST Congratulates Alabama on Significant Improvement in State Tax Appeals and Administration

COST is pleased to announce that Alabama’s grade in the COST “Best and Worst of State Tax Administration” Scorecard on Tax Appeals & Procedural Requirements improves from a “D” to a “B” as a result of H.B. 105, signed into law by Governor Robert Bentley on March 11, 2014.

In our December 2013 Scorecard, we noted that “Alabama lamentably failed to establish [an independent tax appeals tribunal] again this year... We hope that 2014 is the year the legislature will finally push this legislation over the top[.]” Alabama’s success this year is attributable to the tireless efforts of longtime sponsor Representative Paul DeMarco; Governor Bentley; lead architect Bruce Ely, Partner, with assistance from Jimmy Long, Associate, both with Bradley Arant Boult Cummings LLP in Birmingham; and the Business Council of Alabama. COST was privileged to work with these public servants and business leaders to accomplish significant and commendable reform that serves the best interests of Alabama and its citizens.

Analysis of Alabama’s Law Changes and COST’s Scoring Methodology

The foremost change was the establishment of the Alabama Tax Tribunal, eliminating the Department of Revenue’s Administrative Law Division and replacing it, effective October 1, with an independent state agency modeled after the American Bar Association’s Model State Administrative Tax Tribunal Act. With this tax tribunal, Alabama’s two-point assessment in the Scorecard’s independent tax tribunal category is removed. We note, however, that 13 counties and municipalities have “opted out” of the Tax Tribunal’s jurisdiction. While we intend to look at this issue in our next Scorecard release, we hope that in the interim these localities will find their decision burdensome – both for tax administration and taxpayers – and will revoke their election.

There is also no “pay to play” required for appeals to the Tax Tribunal, although there continues to be a tax prepayment (or bond) requirement for subsequent appeals to circuit court. (The bond requirement has been loosened somewhat: taxpayers with a net worth of \$250,000 or less need not post a bond or pay the tax before filing suit.) As such, Alabama’s two-point assessment in the Scorecard’s “pay-to-play” category is reduced from 2 points to 1 point.

Another important reform included in H.B. 105 is extending the running of the time from which a preliminary or final assessment must be appealed from the date of “entry” of the assessment to the earlier of the date of actual mailing to the taxpayer or date of personal service. This change links *constructive* taxpayer notice to the running of a limitations period for appeals. Ideally, this provision would be tied to *actual* notice (i.e., receipt by the taxpayer), however. Also, H.B. 105 failed to extend the 30-day time period to 60 days or more, as recommended by COST and

contained in the original bill. Therefore, Alabama’s two-point assessment in the Scorecard’s “days to protest an assessment” category is reduced from 2 points to 1 point.

H.B. 105 did not impact corporate taxpayers’ filing burdens, as described in the COST Scorecard. Alabama does not provide an extended due date at least 30 days beyond the federal extended due date for filing, and also does not provide certainty for reporting federal tax changes. As a result, Alabama’s two-point assessment in the Scorecard’s “corporate return filing burden” category remains. Likewise, concerns remain with the failure of the Alabama Department of Revenue to publish a significant number of revenue rulings, notwithstanding the requirement for the Tax Tribunal to publish its decisions (which COST supports). As such, the one point assessed under the Scorecard’s “transparency” category remains.

With the enactment of H.B. 105, the repeated failure to enact substantive tax appeals reform noted in the “other issues” category of the Scorecard is remedied. However, concerns remain with the use of outside counsel by the Department of Revenue in complex tax litigation and with many local jurisdictions’ use of private auditing firms. Therefore, Alabama’s two-point assessment in the Scorecard’s “other issues” category is reduced from 2 points to 1 point.

Appendix

Alabama’s December 2013 Scorecard Grading

	Independent Dispute Forum	Pay-to-Play	Even-handed Statute of Limitations	Equal Interest Rates	Ample Protest Period	Corporate Return Filing Burden	Transparency in Guidance & Rulings	Other Issues	Total Points	Overall Grade
AL	2	2	0	0	2	2	1	2	11	D

Alabama’s Updated Grading (December 2014)

	Independent Dispute Forum	Pay-to-Play	Even-handed Statute of Limitations	Equal Interest Rates	Ample Protest Period	Corporate Return Filing Burden	Transparency in Guidance & Rulings	Other Issues	Total Points	Overall Grade
AL	0	1	0	0	1	2	1	1	6	B

A	0 to 3 points
B	4 to 7 points
C	8 to 10 points
D	11 to 13 points
F	More than 13 points