ALABAMA DEPARTMENT OF REVENUE
ADMINISTRATIVE CODE

CHAPTER 810-12-1
100% PENALTY ASSESSMENTS

810-12-1-.06 Issuance Of Writs Of Execution.

(1) SCOPE. This regulation applies to the authority of the Department to issue writs of execution to collect a final assessment of tax that the taxpayer has failed to pay through other means.

(2) PURPOSE. The purpose of this regulation is to provide guidelines for the issuance of writs of execution by the Department that are consistent with the provisions of Title 6 and Title 40 of the Code of Ala. 1975.

(3) PROCEDURE.

(a) The Commissioner or his delegate is authorized, under authority of §40-2-11(16) and §40-29-23, Code of Ala. 1975, to issue writs of execution to collect any final assessment or judgment made or rendered by the Department of Revenue. Executions may be issued to the sheriff of any county in Alabama where the taxpayer may have real or personal property. In order to protect the state's interest, there is no minimal amount required to be due in order to issue a writ of execution. The sheriff shall proceed with the execution in the same manner as if it had been issued out of a circuit court. As provided by §40-1-15, Code of Ala. 1975, the sheriff shall execute writs issued by the Department without requiring any indemnifying bond or other protective obligation.

(b) Identification of Property for Seizure - The Department of Revenue may suggest specific property in which a taxpayer has an ownership interest subject to levy by the sheriff. The sheriff may execute on the property identified by the Department, or he may substitute other property belonging to the taxpayer that he determines to be marketable. The sheriff and/or his deputies will serve notice of levy and sale to the taxpayer in accordance with the procedures provided by Title 6, Code of Ala. 1975. Upon receipt of the writ, the sheriff has responsibility for contacting the taxpayer and serving him with a copy of the Notice of Levy.

(c) Satisfaction Prior to Sale - The sheriff may allow the taxpayer an opportunity to satisfy the final assessment by payment in full. Such opportunity will be determined and handled in accordance with the sheriff's standard operating procedure. If the sheriff is unable to collect the final

assessment within the time he allows, he may proceed to sell the property.

(d) Storage of Personal Property Prior to Sale - When the sheriff finds it necessary to levy on personal property, he may remove the property to any secure location within his county for storage purposes until such time as the assessment is paid or the property can be advertised for sale, and sold. The sheriff will exercise ordinary and reasonable care for the seized property in a manner similar to that which the owner might otherwise exercise. Taxpayers are not entitled to any credit for the value of their property that is stolen after levy but prior to sale, unless such loss or theft is due to negligence by the Department. Any costs incurred by the sheriff for transporting, securing, and storage must be paid by the taxpayer in order to retrieve the property prior to sale. In the event that the Department becomes the successful bidder of the property, the costs of the sale, including, but not limited to advertising, transporting, and storage will be deducted from the successful bid before any credit is given to the taxpayer.

(e) Advertising - Prior to conducting a sale, the sheriff will advertise the property, as required in Title 6, Code of Ala. 1975, in a newspaper of general circulation in the county where the property is located. In the case of personal property, the advertisement will run one time. Advertisements involving levies on real property will run three times prior to the sale. The sale may be postponed if it is determined that the advertisement has not been published in accordance with the provisions of §6-9-87, Code of Ala. 1975, and any such cost will be borne by the taxpayer.

(f) Redemption Prior to Sale - At any time prior to the sheriff's sale, the taxpayer may retrieve his property by paying the amount of the final assessment to the sheriff, along with accrued interest and all costs of the sale. Such costs may include advertising, towing, storage, and other reasonable costs that the sheriff incurs in connection with preparing the property for sale.

(g) Release of Property - The Department may request that the sheriff release the seized property to the taxpayer or a prior lienholder at any time prior to the sale if it is determined that proceeding with the sale is not in the best interest of the Department of Revenue. In such instances, the taxpayer or prior lienholder will be required to pay the sheriff any costs that he has incurred, unless the Department agrees to accept responsibility for such costs because it has erred in the issuance of its writ.

(h) Sheriff to Set Sale - The sheriff will set the day, time, and location when the property is to be sold. The sheriff and/

or his deputy may conduct the sale by either public auction or sealed bid sale. The sheriff may employ a professional auctioneer to conduct the sale of seized property, when in his judgment, it would be advantageous to do so. The Department of Revenue is authorized to have a representative bid for the property when doing so is determined to be in the state's interest. However, the failure of the Department to attend the sale will not invalidate its outcome in any way.

(i) Bidding - The sheriff will offer for sale only the right, title, and interest of the taxpayer in and to the property. The property will be sold subject to all prior encumbrances of record. It shall be the duty of the bidders to determine what liens, if any, may be a prior encumbrance on the property. The property is sold as is and without recourse. Generally, any bid entered by the Department will not exceed the taxpayer's equity in the property or the amount due on the execution(s), plus costs, whichever is less.

(j) Payment of Amount Bid - In the event the Department of Revenue is the successful bidder, the sheriff will issue a sheriff's deed or a bill of sale without requiring the Department of Revenue to remit the amount bid for the property. The taxpayer will be given credit on the assessment for the amount of the Department's bid, less any sheriff's costs that were incurred in bringing the property to sale. When the successful bidder is someone other than the Department, payment should be made by the bidder in accordance with the timeframe and in the manner established by the sheriff conducting the sale.

(k) Special Provisions Relating to the Sale of Motor Vehicles - Whenever the sheriff levies on an automobile titled to the taxpayer, the Department may contact any lienholder of record and advise them of the date, time, and location of the sale. Additionally, the Department may, as provided by §32-8-65, Code of Ala. 1975, inquire concerning the lienholder's security agreement and the indebtedness secured by it. When it is determined that a taxpayer has no equity in the vehicle and the lienholder bids the amount of sheriff's costs, the Department may elect not to bid on the property.

1. In the event that the Department is the successful bidder, the vehicle will be resold under authority of §40-29-36, Code of Ala. 1975.

2. Whenever it is determined that the condition of the vehicle is such that it cannot be transported and/or resold without the expenditure of significant state funds, the vehicle may be turned over to the facility where it has been stored in satisfaction of any unpaid storage costs.

3. Whenever any lienholder obtains a turnover order from a court, or presents documentation substantiating that repossession of the vehicle has occurred, the vehicle may be released to the lienholder.

(l) Third Party Claimant - Whenever the sheriff has levied on personal property, and a third party claims ownership of the property that has been seized, the claimant must file an affidavit and bond, as required by §6-6-160, Code of Ala. 1975, with the sheriff prior to the sale. Upon the filing of a claim, the sheriff will return the affidavit and bond to the clerk of the circuit court so that the claim may be set for hearing.

(m) Department to Assist Sheriff - Whenever the Department issues an execution directing the sheriff to seize and sell the tangible personal property of a business, the Department may assist the sheriff in carrying out the execution by providing personnel to inventory, pack, and transport the property to some secure facility where it will remain until such time as the assessment is paid or a sale conducted.

(n) Redemption Period for Personal Property Sold Under Execution - As provided at §40-29-28(d) Code of Ala. 1975, personal property, including motor vehicles, sold under power of execution may not be redeemed by the taxpayer after the sale has occurred. The property continues to be encumbered by any valid pre-existing liens.

(o) Seizures of Real Property - Whenever the Department of Revenue or sheriff identifies real property in which the taxpayer owns an interest, the sheriff will proceed with the levy as required by Title 6, Code of Ala. 1975. When property is jointly owned with other individuals, only the right, title, and interest of the taxpayer will be offered for sale.

(p) Real Property Transferred Subject to Tax Lien - Real property subject to a state tax lien which has been sold or otherwise transferred by the taxpayer, may be levied upon in the hands of the transferee or any subsequent transferee.

(q) Redemption of Real Property - The taxpayer will have one year from the date of the sale to redeem the property from the purchaser. If the purchaser is the Department, the Department may, in its discretion, allow the taxpayer additional time in which to redeem the property. In any event, when redeeming the property from the state, the taxpayer shall be required to pay the amount of the final assessments covered by the writ of execution, plus accrued interest, the sheriff's costs of the sale, and a reasonable deed preparation fee.

(r) Wrongful Levy - If, subsequent to a sheriff's sale, the Commissioner or his delegate determines that the taxpayer was

not indebted to the Department in substantially the amount claimed or that property has been wrongfully levied, he may, in accordance with §40-29-34 (b)(3), Code of Ala. 1975, return an amount of money equal to the fair market value of the property levied upon. Such amount should be returned to the owner of the vehicle, unless it is determined that a lienholder of record has a prior interest, in which case payments should be made payable to both the lienholder and owner. For the purposes of this regulation, the fair market value may be determined by using an official National Automobile Dealers Association guide or an appraisal made by a professional qualified to render an opinion, and, in either case, should take into account the condition of the vehicle at the time it was seized.

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