



# Collection FAQs

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# Today's Topics

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- How did Act 2021-515 change Chapter 5?
- What was removed and/or added to each section of Chapter 5?
- Which sections were repealed from Chapter 5?
- What are the frequently asked questions involving the Chapter 5 rewrite?



# Act 2021-515

- Effective October 1, 2021
- Comprehensive re-write of the collecting official's section of the Code of Alabama, 1975
- Removed outdated language
- Made significant changes to the collection process
- <https://arc-sos.state.al.us/ucp/L0633638.A11.pdf>



## Section 1: Sections 40-5-1 to 40-5-4 *[AMENDED]*

- Tax collector now referred to as tax collecting official
- Deputies appointed by tax collecting officials now required to be bonded
  - Bond should be no less than 50% of the tax collecting official's bond
  - Expense of the bond shall be paid from the county general fund
- No major changes to the way the collecting official's bond is computed
- Made the section regarding the rates of commission for the collecting official easier to follow



## Section 2: Sections 40-5-5 and 40-5-6 *[REPEALED]*

- Disposition of fees paid to collector on a salary basis
- \$5 Demand fee on delinquent taxpayers
- \$5 Levy and sale fee on personal property
- \$5 Levy and sale fee on real property\*

\*Note: This fee was not added back in another code section



# Section 3: Section 40-5-7 *[AMENDED]*

- REMOVED language that when the collecting official is unable to locate a taxpayer, demand must be made by certified or registered mail sent to the last known place of residence or business
- ADDED
  - Demand to be made in writing by first class mail
  - \$5 Demand fee for each *property* (previously deleted from 40-5-6)



## Section 3: Sections 40-5-8 to 40-5-10 *[AMENDED]*

- Section 40-5-8 [AMENDED]
  - ADDED interest on delinquent payments
- Section 40-5-9 [AMENDED]
  - Interest on delinquent taxes is 12% per annum
  - No changes, cleaned up language
- Section 40-5-10 [AMENDED]
  - REMOVED language that the receipt given to the taxpayer is prima facie evidence that all taxes have been paid



# Section 3: Section 40-5-11 *[AMENDED]*

- **REMOVED**
  - Requirement for a book of receipts to be kept as well as what is required to be on the receipt
  - Requirement to deliver the book of receipts to the county commission
- **ADDED**
  - Language that the collecting official will now maintain a historic file of all individual tax payments
    - Does not give detail on how the file should be maintained or what should be included in the file





## Section 3: Sections 40-5-12 and 40-5-13 *[AMENDED]*

- Section 40-5-12 [AMENDED]
  - Outlines the procedures for a purchaser, lienholder or mortgagee of real estate or personal property to pay the actual amount of taxes due
  - No changes, cleaned up language
- Section 40-5-13 [AMENDED]
  - Order in which multiple parcels shall be paid
  - No changes, cleaned up language



# Section 3: Section 40-5-14 *[AMENDED]*

- REMOVED
  - Language requiring the collecting official to proceed, without delay to conduct a personal property tax sale
  - Requirement to post notification of personal property tax sale at 3 or more public places in the precinct of the residence of the delinquent taxpayer or, if a non-resident, in the precinct where the levy was made



# Section 3: Section 40-5-14 *[AMENDED]*

- ADDED
  - Notifications of personal property tax sales required to be made by certified mail AND by posting on an online website controlled by the collecting official and accessible from the collecting official's website
  - Location options for the personal property tax sale to now include the delinquent taxpayer's place of business
  - Language to clarify that personal property can be sold, even if the equipment is located in another facility owned/possessed by the property owner
  - Class B misdemeanor for anyone that knowingly removes, destroys, or defaces personal property to be sold at tax sale or knowingly interferes with or obstructs the official, sheriff, or agent or deputy from accessing or selling the property



# Section 3: Section 40-5-15 *[AMENDED]*

- REMOVED
  - If owner of personal property didn't claim the remaining balance, the collecting official held the balance in a special fund
  - Three-year time limit for owner to request remaining balance before it is deposited to the credit of the county general fund
- ADDED
  - If owner of personal property isn't present on the day of the tax sale to receive the remaining balance, the collecting official must maintain the funds for 60 days after the sale
  - Funds not collected or claimed during the 60 days are to be deposited to the credit of the county general fund



## Section 3: Sections 40-5-17 and 40-5-18 *[AMENDED]*

- Section 40-5-17 [AMENDED]
  - Levy and sale of personal property – when delinquent taxpayer has left the county
  - Removes the collecting official's liability under bond for failing to comply with this section
- Section 40-5-18 [AMENDED]
  - Levy and sale of personal property – No property exempt
  - No changes, cleaned up language



## Section 3: Sections 40-5-19 and 40-5-20 *[AMENDED]*

- Section 40-5-19 *[AMENDED]*
  - Sale of real property when personalty insufficient
  - No changes, cleaned up language
- Section 40-5-20 *[AMENDED]*
  - Garnishment language was clarified to make the process simpler
  - REMOVED
    - Garnishee must appear before the court to state under oath whether they are or will be indebted to the delinquent taxpayer and the amount of the indebtedness
    - Garnishee must also state if they have property belonging to the delinquent taxpayer in their possession



# Section 3: Section 40-5-20 *[AMENDED]*

- ADDED

- If tax on personal property is still unpaid after January 1, the collecting official shall present the account for taxes to any person they believe may be indebted to the delinquent taxpayer
- A demand shall have the force and effect of a writ of garnishment that can issued to a third party owing the delinquent taxpayer
- The receipt given to the third party shall be taken in all courts of this state as payment on the delinquent taxpayer's indebtedness to the full amount expressed on the receipt
- A delinquent taxpayer may not be compelled to pay any debt before the debt is due or pay more than what is owed
- The cost of the garnishment shall be paid by the party refusing to pay the taxes when requested



## Section 3: Sections 40-5-21 and 40-5-22 *[AMENDED]*

- Section 40-5-21 [AMENDED]
  - Garnishment proceedings conducted in name of state before circuit court
  - No changes, clarified language
- Section 40-5-22 [AMENDED]
  - \$2 garnishment fee now goes to the county general fund instead of the collecting official





# Section 3: Section 40-5-23 *[AMENDED]*

- AMENDED

- Adjusts how collecting official to report insolvents to county commission:

*Shall now submit a report on a form provided by the Department of Revenue showing all errors in assessments, taxes in litigation, insolvents, lands bid in to the state, and tax liens that were not auctioned or sold to their county commission on or before the first regular county commission meeting in June*

- Adjusts how insolvents are published:

*Shall now publish the list of insolvents for two weeks in July on a website of the collecting official or the county website of which the collecting official has access or in a local newspaper published and printed in the county*



# Section 3: Section 40-5-23 *[AMENDED]*

- **REMOVED**
  - Collecting official's requirement to report the list of insolvents and the list of errors in assessments to the Department of Revenue
  - State's payment of a portion of the cost of advertising the list of insolvents
- **ADDED**
  - The entire cost of advertising the list of insolvents is paid from the county general fund and any money collected from the insolvents shall include the cost of advertisement and be repaid to the county general fund



# Section 3: Section 40-5-23 *[AMENDED]*

- ADDED (cont.)
  - Requirement to include the name, residential or business address, and all taxes, cost, and interest charged against each listed person on the list of insolvents
  - Class C misdemeanor for failure to publish and display the list of insolvents
  - Collecting official must certify all reports submitted under 40-5-23 and forward the reports to the Comptroller at final settlement to allow credits to the collecting official



# Section 3: Section 40-5-24 *[AMENDED]*

- REMOVED
  - Requirement that credits for final settlement be approved by the Department of Revenue
- ADDED
  - The county commission, in consultation with the collecting official, will examine the list of insolvents and together will determine which taxes on the insolvents could not be collected
  - County commission directs the collecting official to provide the list of insolvents to the official responsible for issuing state, county, municipal business or manufacturing licenses
  - No such licenses shall be issued for anyone that has insolvent status until the collecting official confirms that taxes, fees, interest and any cost incurred have been paid
  - Once all reports have been examined and approved, the county commission shall provide a letter of approval and acceptance for credits to the state Comptroller for final settlement



# Section 5: Section 40-5-26 *[AMENDED]*

- When allowance and credit to the collecting official for insolvents and taxes in litigation have occurred, a new account must be stated for county taxes (by the county commission) and state taxes (by the state Comptroller)
- The charge for insolvents shall remain on the accounts for no more than 3 years from the tax lien date of the initial tax insolvency
- For taxes in litigation, termination shall be at the discretion of the Comptroller



## **Section 4: Section 40-5-25 [REPEALED]**

## **Section 6: Sections 40-5-27 and 40-5-28 [REPEALED]**

- Section 40-5-25 [REPEALED]
  - List of insolvents and list of errors in assessments to be sent to and approved by the Department of Revenue
- Sections 40-5-27 and 40-5-28 [REPEALED]
  - Presiding officer of county commission to deliver list of insolvent taxpayers and taxes due to the collecting official
  - Collection of insolvent taxes



# Section 7: Section 40-5-29 *[AMENDED]*

- AMENDED
  - Specifies that the final report of the uncollected balances of insolvent taxes and *taxes in litigation* occurs at the first regular meeting of the county commission in January of the succeeding year
- ADDED
  - County commission shall issue a credit to the collecting official for the satisfaction of final settlement with the Comptroller
  - Remaining accounts in litigation shall be kept in a manner prescribed by the Comptroller



# **Section 8: Section 40-5-30 [REPEALED]**

## **Section 9: Section 40-5-31 [AMENDED]**

- Section 40-5-30 [REPEALED]
  - Report when collector retires from office – collector must make a report at the meeting of the county commission next following the date of his retirement so his successor can be charged with the duty of collecting the accounts
- Section 40-5-31 [AMENDED]
  - Taxpayer about to jeopardize possibility of collection
  - No changes, cleaned up language
  - Collecting official's liability under bond remains





# Section 9: Section 40-5-32 *[AMENDED]*

- REMOVED
  - Collecting official shall be liable if they fail to act when notified that any person is about to leave or remove property from the county or that such person is closing out or going out of business or disposing of personal property
- ADDED
  - Collecting official, at their discretion, may accept one or more partial payments of any amount per tax account for payment of taxes and assessments on tangible personal property
  - A \$10 processing fee payable to the collecting official shall be deducted from each partial payment
  - Collecting official must mail at least one notice with the balance due
  - Allows collecting official to, at their discretion, consider an underpayment of \$10 or less as payment in full
  - Comptroller shall adopt rules to implement and administer this section



# Section 10: Section 40-5-33 *[REPEALED]*

# Section 11: Section 40-5-34 *[AMENDED]*

- Section 40-5-33 *[REPEALED]*
  - Collection and report of countywide and school district taxes
- Section 40-5-34 *[AMENDED]*
  - REMOVED
    - Responsibility of the collecting official to assess escaped taxes
  - ADDED
    - Collecting official shall notify the assessing official that certain property has escaped taxation
    - Assessing official shall prepare an assessment up to five prior years at the time of discovery to the owner of the property
    - Assessment shall be made with other like property and shall charge a 10% penalty on the total assessed value plus one \$5 fee
    - The charges, including any other costs, are to be included in the abstract if the escape exists prior to final settlement
    - If the escape occurs after final settlement, the collecting official shall make a report to the state and disburse the proceeds to each agency, withholding the commission at the rate that was applicable prior to final settlement



# **Section 12: Section 40-5-35 *[REPEALED]***

## **Section 13: Section 40-5-36 *[AMENDED]***

- **Section 40-5-35 [REPEALED]**
  - When the collecting official assesses and collects any escaped taxes, he shall report the taxes to the tax assessor who shall enter the amount in the back part of the book of assessments
- **Section 40-5-36 [AMENDED]**
  - **REMOVED**
    - Detailed list of each agency that the collecting official would have to provide a semi-monthly report



# Section 13: Section 40-5-36 *[AMENDED]*

- ADDED
  - Beginning October 15 of each year and then on the 1<sup>st</sup> and 15<sup>th</sup> of each of the following months, the collecting official shall provide a detailed report showing the total gross receipts, including the calculation of taxes for each, interest collected, commissions withheld, and all other documented withholdings from each agency that receives taxes
  - The report should include detail showing each millage rate assessed for each agency
  - The report is a sworn statement that should be available to each agency upon request
  - The collecting official shall make disbursement to each agency that receives taxes within 5 days after the report must be provided



## Section 14: Sections 40-5-37 to 40-5-40 *[REPEALED]*

- Reports and payments into particular treasuries – Failure to make report to Comptroller
- Death of the collector
- Special taxes – Receipts on collection of special taxes
- Special taxes – Payments on collections



# **Section 15: Sections 40-5-41 and 40-5-42 [AMENDED]**

## **Section 16: Section 40-5-43 [REPEALED]**

- **Section 40-5-41 [AMENDED]**
  - When special taxes are no longer required for the purpose for which they were levied, the parties charged with the administration or application shall notify the county commission instead of the county treasurer or custodian of the funds of the county
- **Section 40-5-42 [AMENDED]**
  - Authority to take legal action to collect delinquent property taxes when there is no other provision in law to collect
  - No changes, cleaned up language
- **Section 40-5-43 [REPEALED]**
  - Settlements with particular treasurers



# Section 17: Section 40-5-44 *[AMENDED]*

- REMOVED
  - Detailed list of procedures to conduct final settlement of real and personal property with Comptroller
- ADDED
  - Collecting official to conduct final settlement in accordance with the rules adopted by the state Comptroller
  - \$10 fee per day for failure to settle is now charged against the official's personal capacity



# **Section 17: Section 40-5-45 [AMENDED]**

# **Section 17: Section 40-5-46 [REPEALED]**

- Section 40-5-45 [AMENDED]
  - Removed the travel distance restriction for collecting officials when claiming mileage for the purpose of making final settlement
- Section 40-5-46 [REPEALED]
  - Lien of tax collector – no longer allowed their own lien

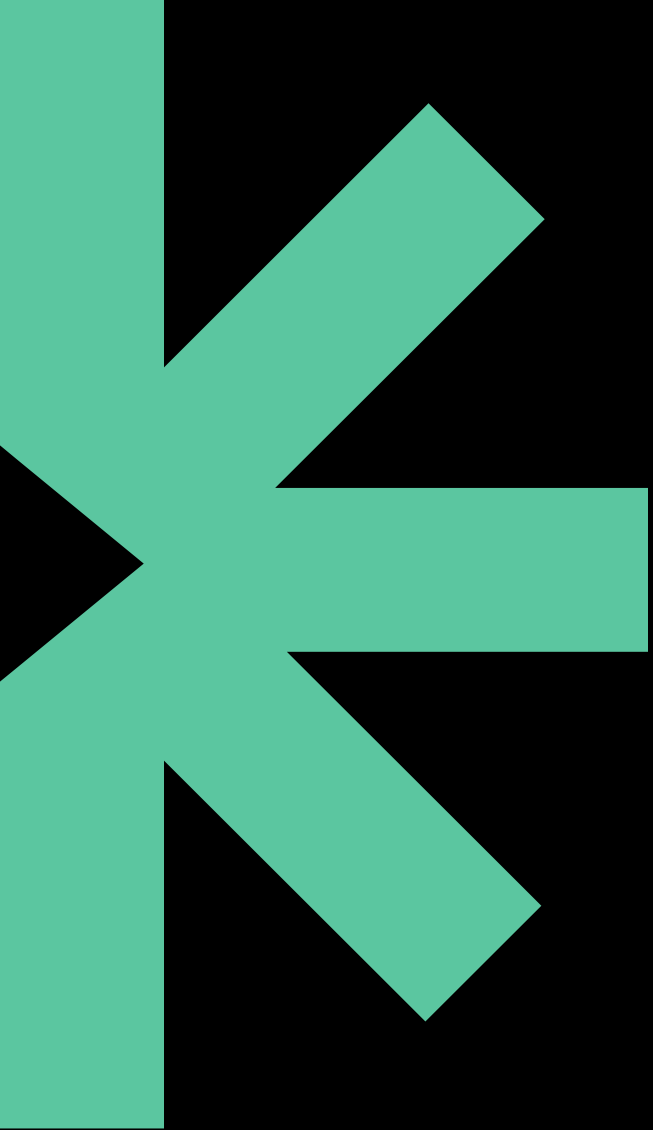




# Section 17: Section 40-5-48 [NEW]

- Tax official who collects ad valorem tax on real property AND motor vehicles may disburse the collections with each semi-monthly report
- Tax official who assesses and collects the ad valorem tax ONLY on motor vehicles and collects the annual motor vehicle license tax and registration fees shall disburse the collections on or before the 20<sup>th</sup> of each month
- Manufactured home fees, commissions, or penalties charged and collected shall be disbursed on or before the 20<sup>th</sup> of each month





# Frequently Asked Questions

# Section 40-5-7 Demand Fee

Should the demand fee be charged per taxpayer or per property/business account?

- For real property, the demand fee is charged on each separate parcel.
- For personal property, the fee is charged at each separate location/location account bill.

## MEMORANDUM

**TO:** Tax Collecting Officials

**FROM:** Jennifer Byrd  
Director  
Property Tax Division *jdb*

**SUBJECT:** FEE FOR LATE PAYMENT OF TAXES DUE

Act 2021-515 was a comprehensive re-write of the Tax Collector's section of the Code of Alabama, 1975. Several counties have posed a question about a specific paragraph of this section, §40-5-7, regarding the charge of a \$5 fee for demand on delinquent taxpayers. This section reads:

"After January 1, the tax collecting official shall make a demand in writing by first class mail upon delinquent taxpayers, or their agents charged with the duty of paying their taxes. The demand fee shall be five dollars (\$5) *for each property* [italics added]. It shall be the duty of the delinquent taxpayer to pay the taxes and fees assessed and charged against the taxpayer, but failure to comply with the requirements of this section shall not invalidate the title to any property sold for taxes."

This memo will clarify the meaning of the term "property" in this Code section as it relates to both real and personal property delinquent taxes. For real property, the demand fee is to be charged on each separate parcel. For example, one taxpayer who owns three parcels and receives a separate bill for each would receive a \$5 demand on each delinquent parcel.

The fee also applies to personal property at each separate location. For example, one business entity may have multiple location accounts within a county. Each account has a separate market value and assessed value on which the taxes are based. The demand fee will apply to each location account bill.

If you have additional questions regarding this issue, please contact the Property Tax Division at 334-242-1525. Thank you.



# \$5 Fees and Charges

So many different \$5 fees are mentioned in both Chapter 5 and Chapter 10. What are they and how have they changed?

## Notes:

Act 2021-515 did not amend Chapter 10; therefore, the fees didn't change.

The \$5 fee for the levy and sale of real property was repealed in 40-5-6, and was not replaced

Fee	To	For (Notice/Document)	Title 40
\$5	Collecting Official	Demand Notice	Repealed in 40-5-6 Replaced in 40-5-7
\$5	Judge of Probate	Show Cause	40-10-27 [NO CHANGE]
\$5	Collecting Official	Serving Show Cause	40-10-27 [NO CHANGE]
\$5	Judge of Probate	Decree of Sale	40-10-27 [NO CHANGE]
\$5	Collecting Official	Levy and Sale of Personal Property	40-5-14 [NO CHANGE]
\$5	Assessing Official	Escape Assessment	40-5-34 [NEW]



# Section 40-5-23

## Insolvents

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What portion of advertising costs does the state pay for insolvents?

- The state no longer contributes to the advertising costs for the list of insolvents.
- The entire cost of advertising the list of insolvents is paid from the county general fund and any money collected from the insolvents shall include the cost of advertisement and be repaid to the county general fund.



# Section 40-5-20

## Garnishments

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How will the changes to 40-5-20 make the garnishment process easier?

- The ability to garnish accounts of delinquent taxpayers has always existed in this statute and can be a viable method if the sale of personal property is not an option or not feasible.
- This change gives the collecting official an option to present a bank, employer, or anyone else who owes the delinquent taxpayer with a garnishment without having to go through a legal proceeding unless the person or entity refuses to pay. The garnishment can be conducted entirely from the tax office, without involving the courts, unless payment is refused.





**Thank you**