



## AlaFile E-Notice

01-CV-2010-903417.00

To: R BRENT IRBY  
birby@mhcilaw.com

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

WASHER & REFRIGERATION SUPPLY CO., INC. ET AL v. PRA GOVERNMENT SERVICES, LLC ET AL  
01-CV-2010-903417.00

The following complaint was FILED on 9/17/2010 2:56:28 PM

Notice Date: 9/17/2010 2:56:28 PM

**ANNE-MARIE ADAMS**  
**CIRCUIT COURT CLERK**  
JEFFERSON COUNTY, ALABAMA  
JEFFERSON COUNTY, ALABAMA  
BIRMINGHAM, AL 35203

205-325-5355  
anne-marie.adams@alacourt.gov

**COVER SHEET**  
**CIRCUIT COURT - CIVIL CASE**  
(Not For Domestic Relations Cases)

Case Number:

**01-CV-201**

Date of Filing:

09/17/2010



**ELECTRONICALLY FILED**  
9/17/2010 2:56 PM  
CV-2010-903417.00  
CIRCUIT COURT OF  
JEFFERSON COUNTY, ALABAMA  
ANNE-MARIE ADAMS, CLERK

**GENERAL INFORMATION**

IN THE CIRCUIT OF JEFFERSON COUNTY, ALABAMA  
WASHER & REFRIGERATION SUPPLY CO., INC. ET AL v. PRA GOVERNMENT SERVICES, LLC ET AL

First Plaintiff: ☒ Business ☐ Individual  
☐ Government ☐ Other

First Defendant: ☒ Business ☐ Individual  
☐ Government ☐ Other

**NATURE OF SUIT:**

**TORTS: PERSONAL INJURY**

- ☐ WDEA - Wrongful Death  
☐ TONG - Negligence: General  
☐ TOMV - Negligence: Motor Vehicle  
☐ TOWA - Wantonnes  
☐ TOPL - Product Liability/AEMLD  
☐ TOMM - Malpractice-Medical  
☐ TOLM - Malpractice-Legal  
☐ TOOM - Malpractice-Other  
☐ TBFM - Fraud/Bad Faith/Misrepresentation  
☐ TOXX - Other: \_\_\_\_\_

**TORTS: PERSONAL INJURY**

- ☐ TOPE - Personal Property  
☐ TORE - Real Property

**OTHER CIVIL FILINGS**

- ☐ ABAN - Abandoned Automobile  
☐ ACCT - Account & Nonmortgage  
☐ APAA - Administrative Agency Appeal  
☐ ADPA - Administrative Procedure Act  
☐ ANPS - Adults in Need of Protective Services

**OTHER CIVIL FILINGS (cont'd)**

- ☐ MSXX - Birth/Death Certificate Modification/Bond Forfeiture  
Appeal/Enforcement of Agency Subpoena/Petition to Preserve  
☐ CVRT - Civil Rights  
☐ COND - Condemnation/Eminent Domain/Right-of-Way  
☐ CTMP-Contempt of Court  
☐ CONT-Contract/Ejectment/Writ of Seizure  
☐ TOCN - Conversion  
☐ EQND- Equity Non-Damages Actions/Declaratory  
Judgment/Injunction Election Contest/Quiet Title/Sale For  
Division  
☐ CVUD-Eviction Appeal/Unlawful Detainer  
☐ FORJ-Foreign Judgment  
☐ FORF-Fruits of Crime Forfeiture  
☐ MSHC-Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition  
☐ PFAB-Protection From Abuse  
☐ FELA-Railroad/Seaman (FELA)  
☐ RPRO-Real Property  
☐ WTEG-Will/Trust/Estate/Guardianship/Conservatorship  
☐ COMP-Workers' Compensation  
☒ CVXX-Miscellaneous Circuit Civil Case

ORIGIN: F ☒ INITIAL FILING

A ☐ APPEAL FROM  
DISTRICT COURT

O ☐ OTHER

R ☐ REMANDED

T ☐ TRANSFERRED FROM  
OTHER CIRCUIT COURT

HAS JURY TRIAL BEEN DEMANDED? ☒ Yes ☐ No

RELIEF REQUESTED: ☒ MONETARY AWARD REQUESTED ☐ NO MONETARY AWARD REQUESTED

ATTORNEY CODE: IRB006

9/17/2010 2:51:37 PM

/s R BRENT IRBY

MEDIATION REQUESTED: ☐ Yes ☒ No ☐ Undecided



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA**

**WASHER & REFRIGERATION  
SUPPLY CO., INC., and DAVID  
L. SMITH, on behalf of  
themselves and all others similarly  
situated,**

**Plaintiffs,**

**v.**

**PRA GOVERNMENT  
SERVICES, LLC, a Virginia  
limited liability d/b/a “Revenue  
Discovery Systems” and/or “RDS”  
and/or “Alatax;” PORTFOLIO  
RECOVERY ASSOCIATES,  
INC., a Delaware corporation;  
C2C RESOURCES, LLC, a  
Louisiana limited liability company;  
and MUNISERVICES, LLC, a  
Delaware limited liability  
company,**

**Defendants.**

**Case No.:** \_\_\_\_\_

**CLASS ACTION COMPLAINT**

Plaintiffs Washer & Refrigeration Supply Co., Inc. (“WRS”) and David L. Smith (“Smith”) on behalf of themselves and as the representatives of the Class, which is defined herein and is a class of Alabama individuals and business entities similarly situated to Plaintiffs, and pursuant to Rule 23 of the Alabama Rules of Civil Procedure, hereby allege the following:

## **I. INTRODUCTION**

1. Plaintiffs bring this action based on Defendants' serial violations of the Alabama Taxpayers' Bill of Rights ("TBOR") and other laws that protect taxpayers from private auditing and collecting firms known as tax "bounty hunters."<sup>1</sup>

2. Approximately 250 counties and municipalities located within Alabama outsource tax assessment, collection, administration, and appeals services to PRA Government Services, L.L.C., also known as or doing business as "Revenue Discovery Systems" or "RDS," and doing business in Alabama as Alatax and/or Revenue Discovery Systems. Hereinafter, PRA Government Services, L.L.C. and the assorted trade names it uses shall be referred to as "RDS." The contractual arrangements RDS has with counties and municipalities located in Alabama, as well as its own business practices, directly violate Alabama law and deprive Alabama taxpayers of their right to be treated fairly and impartially.

3. Notably, RDS and other Defendants have violated the law and Plaintiffs' due process rights in the following ways:

- by exercising the power to tax in contravention of Article XI Section 212 of the Alabama Constitution of 1901 (the "Alabama Constitution");
- by entering into illegal and void contractual arrangements with counties and municipalities;
- by issuing invalid assessments of tax;
- by conducting illegitimate Administrative Reviews (defined herein);

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<sup>1</sup> See 44 Ala. L. Rev. 321 (1992), *Survey of 1992 Alabama Legislation*, which refers to Section 40-2A-6 of TBOR as the "bounty hunter provision."

- by denying taxpayers of their rights to Administrative Appeals (defined herein);
- by misleading taxpayers into believing the only forum for an appeal of a final assessment is to circuit court;
- by receiving fees that are contingent upon, or related to, the amount of taxes assessed or collected from taxpayers;
- by compensating employees through incentive bonuses barred by TBOR;
- by failing or refusing to obtain fidelity and faithful performance bonds for RDS examiners as required by TBOR;
- by unlawfully converting taxpayer property through illegitimate assessments and collections;
- by unlawfully seizing, taking and impairing a taxpayer's property, and slandering the title to such property, through liens and subsequent levy without authority;
- by applying a nonexistent and unduly burdensome standard of review to taxpayers during Administrative Reviews; and
- by committing other wrongful acts.

4. Plaintiffs offer to do equity and ask that the Court take jurisdiction over this matter, and (A) determine and declare that the acts and omissions challenged herein are violative of Alabama law and are in contravention to taxpayers' rights of due process; (B) determine and declare that the contracts and arrangements entered into by RDS with counties and municipalities are void and unenforceable under TBOR; and (C) determine and declare that any and all tax assessments, liens, levies and collections entered or

performed by RDS are unconstitutional, invalid and void, and constitute an unlawful taking; (D) enter such orders as may be appropriate and necessary to enjoin RDS from engaging in further, illegal and improper conduct; (E) determine and provide such relief as may be appropriate to the Plaintiffs and members of the Class, including disgorgement or return of all monies improperly assessed and collected, and such additional amounts as may be necessary to compensate RDS' victims; and (F) award such additional relief, damages, costs, attorneys fees, and interest as may be recoverable as a result of the wrongful conduct alleged herein.

## **II. STATEMENT REGARDING JURISDICTION**

5. Neither Plaintiffs nor any member of the putative class asserts any federal claims or federal causes of action. Neither Plaintiffs nor any member of the putative class asserts any claim arising under any federal law, whether under the United States Constitution or other federal statutory law. The due process claims and constitutional claims asserted and alleged in this matter are brought solely under, and pertain only to, the Alabama Constitution. Any reference by Plaintiffs in this Complaint to the "Constitution" means and refers only to the Alabama Constitution. Further, as already determined by federal courts in this state, any federal jurisdiction over this matter is barred by the Tax Injunction Act. *See Order in Washer & Refrigeration Supply Co., Inc. v. PRA Government Services, LLC, Portfolio Recovery Associates, Inc., C2C Resources, LLC and Muniservices, LLC*, United States District Court for the Middle District of Alabama – Northern Division, Case No. 2:09-CV-1111-WKW.

6. In light of the nature of this action and the claims asserted, jurisdiction is not improper in this Court by virtue of §40-2A-7 of the Alabama Code. Given the facts

and nature of the claims asserted in this action, jurisdiction is not only proper in this Court, but this Court is, in fact, the *only* proper forum available to Plaintiffs and the putative class to challenge and obtain relief for the specific *business practices* described herein. By way of example, the appropriateness of this Court's jurisdiction is demonstrated by, among other things, the following:

A. As set forth in greater detail herein, RDS's exercise of tax-related functions is unconstitutional and/or illegitimate as a matter of law, leaving taxpayers no alternative but to seek relief in this Court. For the reasons set forth and described herein, RDS lacks authority under the Alabama Constitution to serve as the agent for the counties and municipalities for purposes of determining the amount of tax owed or for purposes of *entering an assessment*. As described herein, RDS's assessments were entered without the participation or knowledge of the applicable taxing jurisdiction. Consequently, Plaintiffs *must* be afforded a venue for recovery outside of §40-2A-7, because those procedures apply only to assessments that were properly issued and entered by a county or municipality under the strict guidelines of TBOR and the Alabama Constitution. This Court must first consider whether the RDS assessments are indeed unconstitutional and improper as alleged by Plaintiffs in their declaratory judgment action.

B. Further, jurisdiction is proper in this Court because this action involves important issues of tax policy that are clearly outside the limited scope of §40-2A-7. Specifically at issue in this case is whether the delegation of certain inherently government functions (e.g., entry of tax assessments and adjudication of tax appeals) can be outsourced to private firms, like RDS, under Alabama law. A related issue is whether a *foreign* company, such as RDS, can be vested with the power to enter tax assessments against Alabama citizens. As described herein, RDS's contracts and its business practices violate the letter and spirit of the Alabama Constitution and of TBOR by allowing a foreign company to enter tax assessments against, and decide the tax appeals of, Alabama citizens. Such practices represent an unconstitutional delegation of

authority to RDS, and a review and adjudication of those practices is only proper in this Court.

C. Several claims asserted by Plaintiffs are not suited for adjudication within §40-2A-7 under any circumstances. For example, RDS has wrongfully imposed liens upon real and personal property belonging to individuals (David L. Smith and his nephews) who are not personally liable for taxes assessed by RDS against WRS. Section 40-2A-7 has no applicability in such circumstances.

D. A primary and overarching claim in Plaintiffs' action is a declaratory judgment that the delegation of certain tax-related functions to RDS is unconstitutional and that RDS's contracts with the various counties and municipalities are void, that RDS's business practices are illegal and unconstitutional, and that all RDS assessments are consequently also void. Section 40-2A-7 was not designed to address declaratory judgment actions or to impose jurisdictional prerequisites on such actions like this one.

E. Additionally, as described herein, many of the claims asserted by the Plaintiffs and the putative class relate to conduct that was concealed by RDS in a manner that would prevent any compliance with §40-2A-7 even if it were applicable.

F. Plaintiffs are entitled to assert a private cause of action for violations of TBOR in light of the fact that (i) TBOR contains clear and convincing evidence of legislative intent to impose civil liability and penalties for a violation of TBOR, and (ii) the power to enforce those penalties are not reserved in TBOR to the Attorney General or any agency. *See Liberty National Life Ins. Co. v. University of Alabama Health Services Found., P.C., et al*, 881 So. 2d 1013 (Ala. 2003)(stating that one claiming a private right of action within a statutory scheme must show clear and convincing evidence of legislative intent to impose civil liability for a violation of the statute).

### **III. PARTIES**

7. Plaintiff and taxpayer WRS is an Alabama corporation with its principal place of business in Jefferson County, Alabama. WRS has been engaged in the sale of

home appliances and parts throughout Alabama since 1952. On or about August 29, 2005, WRS sustained financially devastating losses approaching \$2 Million when Hurricane Katrina destroyed WRS' distribution center in Mobile, Alabama. On November 7, 2005, approximately 70 days after the natural catastrophe, RDS initiated a multi-jurisdictional tax compliance audit on WRS. The audit resulted in a preliminary assessment by RDS of approximately \$50,000.00 in sales taxes, interest and penalties for the tax years 2003-2006, an amount which WRS could not immediately pay. Unable to afford the costs of defense, WRS executed an Agreement to Entry of Final Assessment on February 28, 2007 (that agreement failed to inform WRS that it had any right to administratively appeal the final assessment). WRS has made installment payments on said unlawful tax. Further, beginning in September 2009 RDS began receiving assessments from RDS pursuant to the illegal Discovery Contracts described more fully herein.

8. Plaintiff Smith is a shareholder in and President of WRS. Smith and his nephews are currently suffering from liens wrongfully placed on their jointly owned real and personal property by RDS and/or agents of RDS for the taxes illegally assessed against WRS. (See the RDS lien attached hereto as Exhibit A). Smith and WRS are not one and the same and Smith does not conduct business "dba Washer & Refrigeration Supply Co., Inc." as claimed by RDS in the lien.

9. Defendant RDS is a Delaware limited liability company doing business in Alabama under the trade names "Revenue Discovery Systems," "RDS" and "Alatax." Its principal place of business is in Birmingham, Alabama. It is regularly engaged in providing tax assessment, collection, audit and appeal services to Alabama counties and

municipalities. RDS is a “private auditing or collecting firm” as defined in TBOR in *Ala. Code* § 40-2A-3 (a “Private Firm”). RDS is a wholly-owned subsidiary of Portfolio Recovery Associates, Inc. (“PRA”), a publicly-traded entity listed on Nasdaq under the symbol PRAA.

10. Defendant PRA is a corporation incorporated under the laws of Delaware. PRA regularly engages in the business of purchasing, collecting and managing portfolios of defaulted consumer receivables. PRA’s Board of Directors oversees the governance of RDS. As explained below, PRA is directly linked to RDS’ violations of TBOR. PRA profits from dividends, distributions and fees paid by RDS to PRA from illegal RDS revenues.

11. Defendant C2C Resources, LLC (“C2C”) is a collection agency based in Louisiana. RDS has hired C2C, as a “trustee” or “agent,” to collect the unlawful taxes assessed against taxpayers, including WRS and Smith. On information and belief, C2C is neither qualified to conduct business in Alabama as a foreign entity nor licensed in each county and municipality where it directs collection inquiries or files liens.

12. MuniServices, LLC is a Delaware limited liability company based in California. Like RDS, MuniServices is a subsidiary of PRA that provides revenue enhancement services to local governments. As described in greater detail herein, MuniServices exercises supervision and control over RDS’ auditing and administrative hearings department. MuniServices openly boasts of contingency fee auditing and collection services performed in California that are illegal in Alabama under TBOR (see Exhibit B attached hereto, as well as url <http://www.muniservices.com>).

13. Plaintiffs bring no claims against and seek no recovery from the entities that have operated under the corporate names Alatax, Inc. or WWHM, Inc. for any damages, costs, interest, attorneys' fees and tax refunds arising out of, or related to, any of Defendant's wrongful conduct alleged herein. Plaintiffs do seek recovery against RDS and the other named Defendants which may use the trade name "Alatax" as a dba.

14. RDS and the other Defendants are proper parties to this action brought by WRS and Smith. Plaintiffs seek relief from RDS directly and from RDS in its capacity as agent for the Taxing Jurisdictions (defined herein) which are the principals. The practices of RDS at issue were conducted by RDS as an express agent of the government. RDS was hired by the government as its agent, and RDS's actions were conducted exclusively on behalf of the local government. As a governmental agent to whom governmental authority and responsibility was delegated, RDS engaged in conduct which violates taxpayers' due process rights. It is well established that private entities are subject to due process violations so long as the private entity is engaged in activity deemed to be "state action." *See, e.g., Focus on the Family v. Pinellas Suncoast Transit Authority*, 344 F.3d 1263 (11<sup>th</sup> Cir. 2003). RDS, who has been contractually delegated several of the local governments' tax-related responsibilities, is engaged in activity deemed to be "state action."

#### **IV. THE TAXING POWER OF GOVERNMENT CANNOT BE DELEGATED TO PRIVATE ENTERPRISE**

15. The State of Alabama possesses the power of taxation as an incident of its sovereignty. *Pullman Car & Mfg. Corp. of Alabama v. Hamilton*, 155 So. 616, 618 (Ala. 1934). Counties and municipalities, on the other hand, have no inherent power of taxation of their own. Rather, they have only such power as has been delegated to them by the

state. *See Frazier v. State Tax Commission*, 175 So. 402 (Ala. 1937). Under no circumstances, however, may the state or any county or municipality further delegate its taxing power to private enterprise. Commenting on this bedrock principal, the Alabama Supreme Court has noted that the taxing power of government is simply too “strong and dangerous” to be wielded by individuals or private enterprise. *Collins v. Hollis*, 102 So. 379 (Ala. 1924). Likewise, the framers of the predecessor constitution to the Alabama Constitution of 1901 (the 1901 Constitution, the “Constitution”) held the same view, noting that no governmental power is more susceptible to abuse than the taxing power. *Elyton Land Co. v. Mayor and Aldermen of Birmingham*, 7 So. 901 (Ala. 1889). To guard against this abuse, the framers ratified Article XI Section 212 of the Alabama Constitution, which states that “the power to levy taxes shall not be delegated to individuals or private corporations or associations.” As set forth in this Complaint, RDS’ exercise and performance of inherently governmental powers, including the power to levy and enter tax assessments, violates the Alabama Constitution and the due process rights of Alabama taxpayers.

## **V. ALABAMA TAXPAYERS’ BILL OF RIGHTS**

16. TBOR was enacted in 1992 to increase the protective rights of Alabama taxpayers and to establish uniform administrative procedures for the Alabama Department of Revenue (“ADOR”).

17. TBOR complements longstanding taxpayer-favored rules of statutory construction by directing that its provisions “shall be liberally construed to allow substantial justice.” *Ala. Code* § 40-2A-2(1)(a). *See State v. Seals Piano Co.*, 95 So. 451

(1923) holding that taxing statutes should be strictly construed against the taxing authority; *See also Williams v. Pugh*, 129 So. 792 (1930), holding that where the language of a taxing statute is reasonably capable of two constructions, the interpretation most favorable to the taxpayer must be adopted.

18. The requirements of TBOR were directed initially to ADOR. However, the Local Tax Simplification Act of 1998 (“LTSA”) made the statutory mandates of TBOR equally applicable to tax assessments and tax-collection procedures by counties and municipalities. *See GMAC v. City of Red Bay*, 894 So. 2c 650, 653 (Ala. 2004) (citing *Ala. Code* § 11-51-210, as to municipalities and *Ala. Code* § 11-3-11.2, as to counties). LTSA also added the definition of Private Firms to TBOR and set forth apparent limitations (consistent with the Alabama Constitution) on the types of tax-related support services that Private Firms can provide to counties and municipalities. As discussed below, TBOR’s limitations on Private Firms reflect the proper reservation of taxing powers to the State, counties and municipalities.

#### **A. The Limited Authority of Private Firms**

19. TBOR permits counties and municipalities to hire Private Firms to perform a limited range of tax-administration support services, but properly reserves certain inherently governmental powers to the State, counties, and municipalities. In particular, TBOR provides that Private Firms can administer support services in the nature of (A) *collecting* taxes that have been previously levied and assessed by counties and municipalities, and (B) *auditing* taxpayers’ books and records for the purpose of ascertaining, and then recommending, amounts of tax to be entered as assessments by

counties and municipalities. These service limitations are reflected in TBOR's definition of Private Firm:

(17) PRIVATE AUDITING OR COLLECTING FIRM. Any person in the business of collecting, through contract or otherwise, local sales, use, rental, lodgings or other taxes or license fees for any county or municipality, or auditing any taxpayer, through the examination of books and records, for any county or municipality.

20. Notably, this definition of Private Firm does not contemplate, or purport to empower, Private Firms to enter assessments of tax, to conduct quasi-judicial administrative review hearings and appeals, or to consider petitions for tax refunds, all of which are inherently governmental powers. Instead, several provisions of TBOR indicate that the power to enter assessments and conduct administrative procedures is reserved (appropriately) to the counties and municipalities. For example, as discussed more thoroughly below, *Ala. Code* §§ 40-2A-6(a) and 40-2A-6(c) indicate that Private Firms have only the authority to *propose, assert or recommend* assessments of tax. Noticeably absent from this list of authorized actions are the words “enter” or “entry,” which are the primary terms utilized by TBOR to describe the official act of issuing a tax assessment. (Compare the terms “propose, assert or recommend” to *Ala. Code* § 40-2A-7, which uses the words “enter,” “entered” and “entry” thirty two (32) times to describe the official act of issuing a tax assessment.). Also, *Ala. Code* § 40-2A-6(a) suggests that only counties and municipalities (and not Private Firms) have hearings or appeals officers (“The compensation...payable to any employee or other agent of a [Private Firm] *or to any employee or other agent of the state or county or municipal governing authority serving in the capacity of a hearings or appeals officer* may not be contingent upon... the amount of tax... assessed or collected from the taxpayer”).

## **B. TBOR's Bounty Hunter Provision**

21. Under TBOR, counties and municipalities can delegate audit and collection services to Private Firms, subject to important proscriptions and limitations. *Ala. Code* § 40-2A-6.

22. *Ala. Code* § 40-2A-6(a), known as the “Bounty Hunter Provision,” prohibits certain contracts and arrangements between counties and municipalities and Private Firms that could incentivize Private Firms to engage in illegal tactics to maximize tax revenues for their clients and revenues for themselves. These prohibited contracts are referred to colloquially as “Bounty Hunter” contracts.

23. One notable proscription in the Bounty Hunter Provision prohibits a county or municipality from entering into “contracts or arrangements for the *examination* of a taxpayer's books and records<sup>2</sup> if any part of the compensation or other benefits paid or payable for the services of the private examining or collecting firm” is contingent upon or otherwise related to the amount of tax, interest, court cost, or penalty assessed against or collected from the taxpayer.<sup>3</sup> The Alabama Administrative Code Section 810-14-1-.36 further provides that “any arrangement whereby the private auditing firm agrees or has an understanding with the taxing authority that all or part of the firm's compensation will be waived or otherwise not paid if there is no assessment or no collection of tax or if less than a certain amount is assessed or collected is prohibited.”

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<sup>2</sup> Under TBOR, an “examination of books and records” is not limited merely to an examination of records conducted at a taxpayer's place of business. See Op. Att'y Gen (August 1, 2005) which addresses issues relating to a private firm's examination of a taxpayer's books and records which are located at the tax assessor's office.

<sup>3</sup> Under TBOR, there is no “de minimis amount” exception to the prohibition on contingency fees.

24. The Bounty Hunter Provision of TBOR contains a second important proscription which prohibits a county or municipality from entering “into contracts or arrangements for the *collection* of any tax, interest, court cost, or penalty” with a Private Firm if the Private Firm has *any authority to determine* the amount of tax, interest, court cost, or penalty owed the state, county, or municipal governing authority. Notably, this type of Bounty Hunter contract is prohibited if a Private Firm is given the mere authority to determine an amount of tax; there is no prerequisite that a Private Firm has actually exercised that authority by making a determination of any amount of tax.

25. As a penalty for doing business under either of these Bounty Hunter contracts, TBOR states that any such prohibited “contract or arrangement, if made or entered into, is void and unenforceable” *ab initio*. *Ala. Code* § 40-2A-6.<sup>4</sup> Moreover, “any assessment or preliminary assessment of taxes, penalties, court costs, or interest proposed or asserted by, or based upon the recommendation of, a private examining or collecting firm compensated under any such contract or arrangement shall be void and unenforceable.” *Ala. Code* § 40-2A-6.

26. The Office of the Attorney General of the State of Alabama analyzed the Bounty Hunter Provision in a recently issued opinion. See Op. Att’y Gen. (August 1, 2005) (the “A.G. Opinion”). The A.G. Opinion states in pertinent part:

Section 40-2A-6 of the Code of Alabama makes a distinction between determining the amount of taxes that are due and owing, which may not be performed by a private entity on a contingency-fee basis, and simply collecting taxes that have been determined to be due by the appropriate tax officials, which may be performed by private entities on a

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<sup>4</sup> See also *Lucky Jacks Entm’t Ctr., LLC v. Jopat Bldg. Corp.*, No. 1071648, 2009 WL 2002934 (Ala. July 10, 2009), which reaffirms the principle in *Prince v. Prince*, 67 Ala. 565 (1880) that a question of first impression as to the meaning of a statute does not excuse the parties from compliance with the statute so as to render void contracts enforceable. Every party to the contract is required to know the statute’s proper construction. Any such void contract is deemed void and unenforceable from its inception.

contingency-fee basis. . . The private contractor is not allowed to review the records and determine the appropriate amount of tax due. . . *Any discrepancy in the proper amount of taxes due must be determined by the tax assessor.*

### CONCLUSION

It is the opinion of this Office that section 40-2A-6 of the Code of Alabama allows the examination of the tax assessor's records by private entities working for a city, county, or state agency on a contingency-fee basis for the purpose of collecting taxes due, *as long as any question concerning the proper amount of the taxes due is determined by the tax assessor.*

27. The A.G. Opinion clearly states that Private Firms (who receive contingency-fees) are absolutely barred from making any determination which impacts the amount of tax owed by a taxpayer. (Again, TBOR mandates that merely possessing the authority to determine the amount of tax is prohibited, even if such authority is not exercised).

### **C. Prohibited Compensation under TBOR**

28. In addition to prohibiting Bounty Hunter contracts, TBOR establishes important proscriptions on the types of compensation that employees and agents of Private Firms are allowed to receive. Specifically, TBOR prohibits an employee or other agent of a Private Firm from receiving compensation or other benefits "contingent upon, in whole or in part, or otherwise related to, the amount of tax, interest, court cost, or penalty assessed against or collected from the taxpayer" ("Prohibited Compensation"). *Ala. Code § 40-2A-6(b).*

29. For sound policy reasons, TBOR seeks to deter a Private Firm from paying Prohibited Compensation to its employees by mandating that "any assessment or preliminary assessment of taxes, penalties, court cost, or interest proposed or asserted by

or upon the recommendation of a private examining or collecting firm, compensated under any such contract or arrangement, is void and unenforceable.” *Ala. Code* § 40-2A-6(c) (also refer to footnote 6 above regarding the contract being retroactively void).

#### **D. Bonding Requirements under TBOR**

30. TBOR also sets requirements for Private Firms to follow with respect to bonding. For example, *Ala. Code* § 40-2A-14(b) and *Ala. Code* § 40-23-30 require that Private Firms, such as RDS, meet certain strict conditions precedent before engaging in an audit or examination of a taxpayer’s books and records.

31. In particular, *Ala. Code* § 40-2A-14(b) and *Ala. Code* § 40-23-30 together provide that each Private Firm shall maintain bonds that meet the following six requirements: (A) a \$5,000 bond shall be obtained with respect to each examiner used by the Private Firm; (B) the bond shall be obtained by the Private Firm that retained the examiner, not by a parent company or affiliate of the Private Firm; (C) the bond must be obtained prior to the examiner performing examination services upon a taxpayer; (D) the form of the bond must be approved by the Governor of the State of Alabama prior to the performance of examination services; (E) the bond must be both a fidelity bond and a bond that insures the faithful performance of the examiner; and (F) the bond must be executed in favor of the State of Alabama for the benefit of its taxpayers (the “Bond Requirements”).

32. As a penalty for circumventing or ignoring the Bond Requirements, *Ala. Code* § 40-2A-14(b) declares that: (A) any contract or arrangement between a self-administered county or municipality and a Private Firm failing to meet the Bond Requirements shall automatically terminate, (B) any assessment or proposed assessment

issued by the self-administered county or municipality or its agent as a result of any examination conducted, in whole or in part, by an un-bonded examiner is void, and (C) any Private Firm who utilizes an un-bonded examiner shall forfeit its license granted pursuant to *Ala. Code* § 40-12-43.1 for a period of six months.

33. Under Alabama law, taxpayers have been required to strictly comply with bonding requirements under TBOR. *See State Department of Revenue v. R.L. Garner and Saundria Garner*, 812 So. 2d 380, 384 (Ala. Civ. App. 2001) (the missing signature of the surety on the taxpayer's supersedeas bond did not comport with the unambiguous wording of § 40-2A-9). Similarly, Private Firms such as RDS should be held to the same standard of strict compliance with respect to the Bond Requirements.

#### **E. Taxpayers' Right to an Administrative Hearing and Appeal**

34. In addition to providing substantive taxpayer protections, TBOR establishes a taxpayer's right to seek relief from tax assessments entered by counties and municipalities through administrative remedies.

35. Under TBOR, after the entry of a *preliminary assessment* by a county or municipality, a taxpayer may petition for an administrative review of the preliminary assessment (an "Administrative Review"). *Ala. Code* § 40-2A-7(b)(4). The purpose of the Administrative Review is to allow a taxpayer an opportunity to present evidence to support his, her or its challenge to a preliminary assessment, as well as to discuss any errors or omissions that may have occurred during an examination of such taxpayer's books and records by the county, municipality or Private Firm.

36. TBOR provides no specific standard of review in an Administrative Review. Section 40-2A-7(b)(5)(c) of TBOR merely provides that if ". . . upon further

review the department [or county or municipality] determines that the preliminary assessment is due to be upheld in whole or in part, the department [or county or municipality] may make the final assessment. . .”

37. Following the entry of a *final assessment* by a county or municipality, or following the denial of a refund request by a county or municipality, a taxpayer has the right under TBOR to appeal to either (a) an administrative agency of the county or municipality that is similar to the Administrative Law Division of the Alabama Department of Revenue, or to (b) the Circuit Court of Montgomery County, Alabama, or to the circuit court of the county in which the taxpayer resides or has a principal place of business in Alabama (an “Administrative Appeal”). See *GMAC v. City of Red Bay*, 894 So. 2c 650, 653 (Ala. 2004). See also *Ala. Code* § 11-51-191(e)(1), indicating that the right to an Administrative Appeal exists with respect to a final assessment by a county or municipality, and that such county or municipality shall appoint a hearing officer that shall “function in a manner similar to the Administrative Law Judge of the Department of Revenue” and who must be “impartial and reasonably knowledgeable of the applicable law.” Importantly, an Administrative Appeal of a final assessment enables a taxpayer to challenge a final assessment *without the additional expense* of filing an appeal in circuit court and *without paying the tax or posting a supersedeas bond*. Neither the Alabama Constitution nor TBOR permit Private Firms to conduct the required administrative proceedings.

38. Under TBOR, a taxpayer’s right to avail himself or herself of the administrative proceedings within the county or municipality is inviolable.

## V. RDS

Plaintiffs allege the following on information and belief:

### A. Generally

39. RDS provides privatized tax assessment, collection and administration services to numerous counties and municipalities in Alabama as a Private Firm. RDS' services cover multiple categories of taxes, including sales and use, business license, insurance premium, alcohol, gas, hotel and motel lodging, rental and lease, tobacco, severance, and others.

40. Pursuant to contractual arrangements with counties and municipalities, RDS' services include *entering* preliminary and final tax assessments, processing tax payments and tax forms, collecting delinquent taxes, identifying businesses that have not paid business license taxes (a service known by RDS as "discovery/recovery"), conducting taxpayer audits, performing compliance actions, and *conducting Administrative Reviews*. RDS also contractually assumes the responsibility to provide Administrative Appeals on behalf of counties and municipalities.

41. RDS reports that it contracts with more than 250 counties and municipalities in Alabama<sup>5</sup> and processes more than \$740 Million in tax revenues annually.

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<sup>5</sup> RDS contracts with Addison, Albertville, Alexander City, Aliceville, Allgood, Altoona, Andalusia, Anniston, Arab, Ardmore, Ariton, Arley, Ashville, Ashford, Athens, Atmore, Attalla, Autaugaville, Bay Minnette, Bear Creek, Beatrice, Beaverton, Belk, Berry, Bessemer, Blountsville, Boaz, Boligee, Brantley, Brent, Brewton, Bridgeport, Brighton, Brilliant, Brookwood, Butler, Calera, Camden, Camp Hill, Carbon Hill, Castleberry, Cedar Bluff, Centre, Centerville, Chelsea, Chickasaw, Citronelle, Clay, Clanton, Clayhatchee, Clayton, Cleveland, Coaling, Collinsville, Columbiana, Coosada, Cordova, Cowarts, Creola, Crossville, Cuba, Dadeville, Demopolis, Detroit, Dora, Dothan, Double Springs, Douglas, Eclectic, Elberta, Elmore, Enterprise, Eufaula, Eutaw, Evergreen, Excel, Fayette, Five Points, Flomaton, Florala, Florence, Franklin, Forkland, Frisco City, Fulton, Fultondale, Fyffe, Gadsden, Gardendale, Geiger, Glen Allen, Goodwater, Gordo, Gordon, Gordonville, Goshen, Greensboro, Guin, Gurley, Hackleburg, Haleyville, Hamilton, Hartselle, Hayneville, Headland, Heflin, Henagar, Hillsboro, Hodges, Hurtsboro,

42. The counties and municipalities served by RDS (and which are identified in footnote 7 of this Complaint), together with all other counties and municipalities in Alabama served by RDS but not listed herein, may be referred to herein on a singular basis as a “Taxing Jurisdiction” and collectively as the “Taxing Jurisdictions.”

43. Each Taxing Jurisdiction doing business with RDS is a party to one or more contracts or arrangements with RDS. Some Taxing Jurisdictions do business with RDS under contracts known as Tax Revenue Enhancement Agreements Business License Discovery / Recovery (“Discovery Contract”), while other Taxing Jurisdictions do business with RDS under contracts known as Tax Revenue Enhancement Agreements Revenue Administration (“Administration Contract”). Some Taxing Jurisdictions do business with RDS under both the Discovery Contract and the Administration Contract, in which case the contracts constitute a single contractual “arrangement” between RDS and each Taxing Jurisdiction.

44. The Discovery Contract and the Administration Contract are standard form contracts that were drafted and/or approved by PRA and RDS. The contractual

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Jackson, Jackson’s Gap, Jacksonville, Jemison, Kennedy, Kimberly, Kinsey, Lanett, Lake View, Leeds, Leesburg, Lexington, Linden, Lineville, Lipscomb, Lisman, Littleville, Livingston, Loxley, Luverne, Lynn, Magnolia Springs, Maplesville, Marion, Midfield, Midland City, Midway, Millport, Millry, Monroeville, Morris, Mosses, Moulton, Moundville, Mount Vernon, Mulga, Napier Field, New Brockton, New Hope, North Courtland, Notasulga, Ohatchee, Oneonta, Opelika, Opp, Ozark, Parrish, Pennington, Phenix City, Phil Campbell, Piedmont, Powell, Priceville, Prichard, Ragland, Rainsville, Red Level, Reform, Rehobath, Repton, Riverside, Roanake, Rutledge, Samson, Sand Rock, Sandford, Sardis City, Scottsboro, Selma, Siverhill, Smiths Station, Southside, Spanish Fort, Steele, Stevenson, Sulligent, Sumiton, Sylvan Springs, Sylvania, Tallassee, Tarrant, Thomasville, Thorsby Town Creek, Tuskegee, Union, Union Springs, Uniontown, Valley, Valley Grande, Vernon, Vestavia Hills, Vina, Vincent, West Jefferson, Warrior, Weaver, Webb, Wedowee, West Blockton, Westover, Wetumpka, Wilsonville, Winfield, Woodland, Woodstock, Yellow Bluff, York, Autauga County, Barbor County, Blount County, Bibb County, Bullock County, Calhoun County, Chambers County, Cherokee County, Chilton County, Choctaw County, Clarke County, Clay County, Cleburne County, Coffee County, Conecuh County, Covington County, Dale County, Dallas County, Elmore County, Etowah County, Fayette County, Greene County, Hale County, Henry County, Houston County, Jackson County, Lauderdale County, Lamar County, Lawrence County, Lee County, Lowndes County, Macon County, Marengo County, Marion County, Marshall County, Monroe County, Perry County, Pickens County, Pike County, Russell County, Sumter County, Tallapoosa County, Walker County, Wilcox County and Winston County.

terms of the Discovery Contracts and Administration Contracts used in each Taxing Jurisdiction are virtually identical. The Discovery Contract and the Administration Contract empower RDS to reach taxpayers who do not reside in the Taxing Jurisdictions by allowing RDS to determine, and avail itself of, taxable nexus.

45. Because of the long arm of taxable nexus (and the potential for abuse of taxable nexus), Plaintiffs and taxpayers located in *all* jurisdictions (whether within or without a Taxing Jurisdiction) constitute intended third party beneficiaries under the Discovery Contracts and the Administration Contracts.

46. As set forth in greater detail below, RDS's entry of preliminary and final assessments of tax, as well as RDS's performance of administrative procedures under the Discovery Contracts and Administration Contracts, constitutes a violation of taxpayers' due process rights arising under Article XI Section 212 of the Alabama Constitution.

47. Also, as set forth in greater detail below, the Discovery Contract and the Administration Contract constitute Bounty Hunter contracts that are void pursuant to TBOR. In addition, the Discovery Contract and the Administration Contract are the basis for the payment of Prohibited Compensation, and such compensation scheme renders them void under TBOR.

48. TBOR § 40-2A-6(a) does not allow Private Firms to compartmentalize illegal activities within separate divisions or through separate contracts. Rather, if one type of contract with a Taxing Jurisdiction is deemed illegal and void, then the entire "arrangement," including all other contracts with that same Taxing Jurisdiction are void

49. Because the Discovery Contract and Administration Contract (i.e., the "arrangement") are void, RDS' and its agents' performance under those contracts are

unauthorized and have resulted in invalid assessments, invalid liens, invalid levies, illegally collected taxes, and illegitimate Administrative Reviews in each Taxing Jurisdiction which have harmed taxpayers both within and without the Taxing Jurisdictions.

50. As stated, neither Article XI Section 212 of the Alabama Constitution nor TBOR contemplate the delegation of sovereign taxing powers to private enterprise, as attempted by the Taxing Jurisdictions and RDS. Perhaps even more troubling is that RDS *has further delegated* sovereign taxing powers to independent contractors such as Atkins & Associates, LLC that, to Plaintiff's knowledge, (A) violate TBOR in the same manner as RDS, (B) are not licensed as Private Firms under *Ala. Code* §40-12-43.1, and (C) fail to identify themselves to taxpayers as being "twice removed" from the actual Taxing Jurisdiction. These independent contractors then delegate those powers *again* to their own employees and contractors, thus further widening the gap of accountability between the Taxing Jurisdiction and its revenue agents in the field. In fact, the Taxing Jurisdictions likely have no idea of the number or the names of the persons who are now serving as their revenue agents, whether as contractors, sub-contractors or sub-sub-contractors. This lack of accountability has materialized as a pyramid scheme of tax collection that cannot stand.

#### **B. The Discovery Contract**

51. A copy of a Discovery Contract is attached hereto as Exhibit C. Upon information and belief, RDS' Discovery Contract was approved by Judy Scott, a senior executive and general counsel of PRA. PRA's 2008 Annual Report (accessible at url <http://www.portfoliorecovery.com/>) lists PRA's corporate legal department's duties and

responsibilities, which include contract and document preparation and review, ensuring compliance with federal and state laws and regulations, and obtaining and maintaining licenses, bonds and insurance. The Discovery Contract represents an impermissible delegation of taxing powers in violation of Article XI Section 212 of the Alabama Constitution and TBOR. RDS and PRA knowingly and intentionally adopted the Discovery Contract which is, on its face, in violation of these laws.

52. Under the Discovery Contract, Taxing Jurisdictions authorize RDS to identify, assess, and collect taxes from taxpayers whom *RDS determines* are operating within a Taxing Jurisdiction without proper business licensing and/or without paying proper taxes (each such taxpayer identified by RDS is referred to as a “Target”). A Target may be located within or without the Taxing Jurisdiction. Throughout every phase of RDS’ performance of the Discovery Contract, RDS makes illegal determinations of the amount of tax (including penalties and interest) owed by Targets.

53. As compensation for identifying, assessing and collecting taxes from Targets, RDS is customarily paid an unlawful contingency fee equal to 50% of business license revenue collected from Targets (See Section B(3)(i) of Exhibit C).

54. RDS’ determination of the amount of tax owed by Targets, coupled with RDS’ receipt of a contingency fee, violates the Bounty Hunter Provision of TBOR.

55. RDS chooses which Targets it will assess without input from a Taxing Jurisdiction. Under the Discovery Contract, RDS’ revenues increase in direct proportion to the number of Targets RDS chooses to identify and assess.

56. Section A(1)(iii) of the Discovery Contract provides that RDS will “generate a letter requiring payment, proof of payment, or an appeal” for all Targets

identified by RDS (the “Payment Letter”). The Discovery Contract further provides that if a Target does not respond to the Payment Letter, RDS will proceed with “assessment procedures” as allowed by law.<sup>6</sup> (See Section A(1)(iii) of Exhibit C).

57. The phrase “assessment procedures” undoubtedly refers to either the traditional notion of a preliminary or final assessment prescribed by taxing statutes, or to the common meaning of the word “assess” (i.e., to *determine* the rate or amount of, or to subject to a tax).<sup>7</sup> Under either interpretation of the phrase “assessment procedures,” Section A(1)(iii) of the Discovery Contract authorizes RDS to make some type of assessment-related determinations that affect a Target’s tax liability.

58. Beginning in September 2009, WRS began receiving notices from RDS pursuant to the illegal Discovery Contracts for the Taxing Jurisdictions that have already assessed sales taxes against WRS (the concept of taxable nexus is the same for business license taxes and sales taxes).

### **Payment Letter**

59. RDS mails each Target a Payment Letter along with a blank business license application (an “Application”).

60. The Payment Letter alerts Targets that they have been identified by RDS as having conducted business in the Taxing Jurisdiction. Presumably, RDS has already determined the taxable nexus of the Target, or ignored the concept of taxable nexus, prior to sending the Payment Letter. The Payment Letter instructs the Target that the Taxing

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<sup>6</sup> Section 40-2A-7 of TBOR, which states that if a taxpayer fails to submit a tax return the taxing jurisdiction is authorized to *determine* the value or amount of tax owed by a taxpayer based on the most accurate and complete information reasonably obtainable by the taxing jurisdiction. However, RDS is prohibited from exercising that same authority since it receives contingency-fee compensation under the Discovery Contract.

<sup>7</sup> <http://www.merriam-webster.com/dictionary/assess>

Jurisdiction's business license ordinance requires anyone who has done any kind of business, trade or profession with the Taxing Jurisdiction to pay a license fee for the privilege of doing so. However, the Payment Letter purposefully omits any discussion of applicable exceptions to this general principal, in particular those relating to taxable nexus.<sup>8</sup>

61. The Payment Letter is signed by an RDS "Collection Officer" which is intended by RDS to carry an implicit threat of subsequent legal action against the Target if taxes are not immediately paid. The Collection Officer's signature also implicitly warns that RDS has determined that the Target's tax liability has accrued and is now due and owing.

62. Pursuant to Section A(1)(iii) of the Discovery Contract, RDS' Payment Letter notifies each Target that it has an account that must be resolved by either (A) calling RDS on a prescribed assistance hotline for help completing the enclosed application (the "Hotline"), and then remitting payment or (B) providing a written statement to RDS presenting arguments why the Target does not owe a business license tax (a "Written Statement").

63. Although the Payment Letter appears to constitute some type of payment demand tantamount to an assessment (as contemplated in the Discovery Contract), it is unclear on its face whether it constitutes an official preliminary or final assessment from RDS since the words "assessment" or "assess" never appear on the Payment Letter. However, the Payment Letter has several hallmarks of a preliminary assessment. In particular, it is issued from an official tax compliance/collections department, references

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<sup>8</sup> Establishing taxable nexus is a condition precedent to a municipality or county assessing a tax against a taxpayer. Taxable nexus is not a bright line test, as evidenced by cases such as *Yelverton, Inc. v. Jefferson County*, 742 So. 2d 1216 (Ala. Civ. App. 1997).

a taxpayer's "account" with the Taxing Jurisdiction, instructs the Target to remit payment of tax within a set time frame and provides notice that the Target has an option to challenge the Payment Letter.

64. Plaintiffs contend that the Payment Letter constitutes the entry of a preliminary or final assessment under TBOR. Alternatively, the Payment Letter is an unauthorized and illegal payment demand tantamount to the entry of a preliminary or final assessment. Moreover, the Payment Letter and the assessment process described therein violate TBOR and Article XI Section 212 of the Alabama Constitution.

65. Nowhere in the Payment Letter or on the Application does RDS instruct or advise a taxpayer to seek the assistance of an accountant, lawyer or other professional for help completing the Application, determining taxable nexus, or responding to RDS. Also, nowhere in the Payment Letter is there a clear and simple written description of the Target's rights under TBOR to challenge the Payment Letter.

### **Application**

66. The Application designed by RDS is misleading, confusing and contradictory. For example, some Applications identify a delinquency date for the underlying business license tax, but mysteriously require the Target to pay a penalty on tax payments received by RDS *before the delinquency date*. RDS officials themselves are unable to complete the Application because of its confusing nature.

67. Furthermore, the Application requires all Targets to report confidential information that is oftentimes unnecessary for the calculation of tax. For example, Targets who pay only a flat license tax (e.g., \$100.00) *are required* by RDS to report

gross-receipts, net sales and deductions even though those items are not used to determine the amount of the license tax.

68. Upon information and belief, RDS creates a “master taxpayer file” on each Target within a Taxing Jurisdiction for the purpose of aggregating the unnecessary and confidential information collected through the Application. RDS auditors utilize this master tax file as an on-hand resource during sales and use examinations administered under the Administration Contract. The master tax file gives RDS auditors a “sneak peek” at information normally found in a taxpayer’s books and records without having to adhere to procedural limitations set forth in TBOR with respect to examinations of taxpayer books and records. Consequently, this unauthorized review of a taxpayer’s books and records may provide an impetus for the launch of a full scale audit of that taxpayer under the Administration Contract.

69. RDS regularly excludes the complete applicable Taxing Jurisdiction’s license class/fee schedule from the Payment Letter and Application so that Targets will be forced to call the RDS Hotline for help completing the Application.

70. RDS often includes an abridged list of commonly selected business license classes along with the Application. RDS’ inclusion of the abridged business license class/fee schedule with the Application misleads taxpayers into believing that RDS has already pre-selected the classes which may apply to the Target.

71. RDS, by company policy, intentionally leaves out taxpayer instructions from the Payment Letter and Application so that Targets will be forced to call the Hotline for help completing the Application.

## **Hotline**

72. RDS utilizes the Hotline as an opportunity to inform Targets of the amount of tax that RDS determines is owed to the Taxing Jurisdiction. RDS reports that it handles approximately 150,000 taxpayer service calls annually.

73. Targets who call the assistance Hotline are greeted by RDS employees who work in RDS' Discovery department (the "Discovery Analysts"). Discovery Analysts are eligible to receive, and do receive, illegal monthly incentive bonuses from RDS based directly on the amount of business license and other tax revenues collected by RDS. In addition, each Discovery Analyst is subject to an illegal collection goal or quota set by RDS.

74. The monthly incentive bonuses received by Discovery Analysts constitute Prohibited Compensation which improperly incentivizes Discovery Analysts to use inappropriate or illegal tactics to extract maximum tax revenue from Targets.

75. Discovery Analysts – not the Taxing Jurisdiction – regularly make the following determinations during their contacts with the Target: (A) whether the Target has taxable nexus with the Taxing Jurisdiction, (B) which business license class or classes are applicable to the Target, (C) which taxable years are applicable (or not applicable) to the Target (i.e., present taxable year and/or previous taxable years), (D) whether the Target owes penalties and interest, and in what amounts, (E) whether the Target qualifies for an exemption, and (F) whether to waive penalties against a Target. Discovery Analysts regularly compute and enter the amount of tax owed for the Target using the Hotline. Discovery Analysts are not formally trained in the concept of "taxable nexus," nor are they educated on TBOR.

76. Notably, RDS' selection of the type of license class or classes applicable to a Target bears directly on the amount of license tax owed by a Target (i.e., there are flat fee classes, gross receipts-based classes, unit based classes, etc.). The difference in the amount of tax paid by a flat-fee taxpayer and a gross receipts-based taxpayer can be in the tens of thousands of dollars.

77. Each of the determinations made by Discovery Analysts over the Hotline directly affects the amount of tax owed by a Target.<sup>9</sup> Consequently, each determination made by a Discovery Analyst is illegal under TBOR. Any question that may lead to a taxable consequence should be referred to the Taxing Jurisdiction for its determination of the proper amount of tax owed (as required by TBOR and the A.G. Opinion). The conversation between a Target and a Discovery Analyst on the Hotline gives RDS its desired opportunity to determine, and potentially overstate, the amount of tax owed by a Target.

78. Discovery Analysts instruct Targets to complete the Application in accordance with the determinations made by Discovery Analysts over the Hotline.

79. The information solicited by Discovery Analysts from Targets over the Hotline is considered by RDS to be a "taxpayer record" which is examined by RDS. Accordingly, RDS is conducting examination services under the Discovery Contract that are prohibited by TBOR because RDS receives prohibited contingency fees.

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<sup>9</sup> Under the Discovery Contract, RDS is serving as agent for the taxing jurisdictions pursuant to *Ala. Code* Section 11-51-191, which addresses a taxing jurisdiction's right to *determine* "that the amount of any business license tax reported on or remitted with a business license remittance form is incorrect, if no business license remittance form is filed within the time prescribed, or if the information provide on the form is insufficient to allow the taxing jurisdiction to *determine* the proper amount of business license tax due."

80. Assuming *arguendo* that RDS is authorized under the Alabama Constitution and TBOR to waive penalties, RDS has an arbitrary company policy of permitting only one waiver per taxpayer. Such an arbitrary policy violates TBOR and taxpayers' right to waivers provided under *Ala. Code* § 40-2A-11 (TBOR does not arbitrarily limit each taxpayer to 1 waiver).

#### **RDS' Receipt of Applications and Tax Payments**

81. When RDS receives a completed Application or tax payment (whether received from a Target who called the Hotline or from a Target who chose not to call the Hotline) RDS – not the Taxing Jurisdiction – makes the following additional determinations of the amount of tax owed to a Taxing Jurisdiction: (A) whether a Target has remitted the proper amount of tax, (B) whether a Target has remitted an underpayment of tax, (C) whether a Target has remitted a late payment of tax, and (D) whether the Target overpaid the tax.

82. If RDS determines that a Target underpaid the tax or remitted a late payment, RDS sends an invoice to the Target for additional amounts of tax determined to be owed to the Taxing Jurisdiction. (See Section A(4) of Exhibit C). This process violates TBOR. RDS should refer these issues to the Taxing Jurisdiction for its determination of the proper amount of tax owed.

83. The invoices constitute the entry of either preliminary assessments or final assessments, and should be clearly identified as such.

84. Targets are not informed that the invoices constitute the entry of either preliminary assessments or final assessments, or that the Target has a right to challenge the invoice-assessment under TBOR.

85. If RDS determines that a Target remitted an overpayment, RDS (pursuant to company policy) does not notify the Target of the overpayment or the procedure by which the Target can make a claim for refund, as required under TBOR. Instead, RDS secretly retains the overpayment and takes its fifty percent (50%) contingency fee on the overpaid amount. RDS' failure or refusal to notify Target's of a potential refund violates *Ala. Code* § 40-2A-13(h) of TBOR. As a penalty for failing to alert the Target of Target's right to a refund, RDS is subject to forfeiture of its license granted pursuant to *Ala. Code* § 40-12-43.1 for a period of six (6) months. *See Ala. Code* § 40-2A-13(h).

86. Moreover, the Discovery Contract's indemnification provision expressly contemplates that RDS be indemnified for all of its duties thereunder, including its *determination of tax*:

To the full extent allowed by law, [Taxing Jurisdiction] hereby agrees to indemnify and hold AlaTax harmless from any claims and against all costs, expenses, damages, claims and liabilities, *relating to the determination of taxes* due from taxpayers, the collection thereof and any refunding related thereto. (See Section B(6) of Exhibit C).

87. PRA and RDS have benefited greatly from the violations of law committed by Defendants under the Discovery Contract in the form of dividends and distributions of profits illegally obtained from Alabama taxpayers.

#### **Written Statement/Administrative Remedies**

88. Under the Discovery Contract, Taxing Jurisdictions have illegally delegated to RDS the responsibility of providing a TBOR-compliant review and appeals process to Targets who disagree with RDS' Payment Letter and subsequent assessments.

To wit, Section B(2) of the Discovery Contract provides:

Review and Appeal Process: RDS has adopted and will use a *review and appeals* process which is based on the Alabama Taxpayers' Bill of Rights

Act and Uniform Revenue Procedures Act codified at Title 40, Chapter 2A, Code of Alabama, 1975, as amended.

89. Unlike the Discovery Contract, which refers to both a Target's right to *appeal* and RDS' responsibility to provide a TBOR-compliant review and *appeal* process, the Payment Letter uses the phrase "written statement" which is a term not found in the Discovery Contract or in TBOR. The Payment Letter does not provide Targets with any required notices respecting Administrative Reviews or Administrative Appeals under TBOR. Furthermore, written Statements are submitted for RDS' consideration, not for the consideration of the Taxing Jurisdiction.

90. RDS – and not the Taxing Jurisdiction – determines whether a Target's Written Statement has enough merit to forestall further assessment and collection efforts by RDS.

91. RDS' authority under the Discovery Contract to review Written Statements and make determinations on the merits violates TBOR because RDS receives contingency fees under the Discovery Contract.

92. The review and appeal process conducted by RDS under the Discovery Contract violates TBOR and other laws.

93. RDS' contingency fee-based revenues and incentive based compensation plan for Discovery Analysts financially incentivizes RDS, and the Discovery Analysts, to rule against Written Statements and to overstate the amount of tax owed by Targets.

94. Moreover, to the extent RDS may provide an Administrative Review or Administrative Appeal of a business license tax that was initially collected through the efforts of a Discovery Analyst, such process represents yet another way RDS "determines" taxes collected through the Discovery Contract.

### **C. The Administration Contract**

95. A copy of an Administration Contract is attached hereto as Exhibit D. Upon information and belief, RDS' Administration Contract was approved by PRA's corporate legal department. The illegal collections, audit and administrative services of the Administration Contract are overseen by MuniServices in California. RDS, PRA and MuniServices knowingly and intentionally adopted the Administration Contract, which is, on its face, in violation of Alabama law. The Administration Contract represents an impermissible delegation of taxing authority in violation of Article XI Section 212 of the Alabama Constitution and TBOR. Plaintiff WRS has suffered from unlawful sales tax assessments prosecuted by RDS through illegal Administration Contracts in multiple Taxing Jurisdictions.

96. Under the Administration Contract, Taxing Jurisdictions authorize RDS to enter preliminary and final tax assessments, collect and process tax payments and tax forms, collect delinquent taxes, conduct taxpayer audits through an examination of books and records, initiate compliance actions and conduct Administrative Reviews and Administrative Appeals on their behalf.

97. Like the Discovery Contract, RDS makes determinations under the Administration Contract that affect the amount of tax owed by Targets at nearly every step of the process (i.e., audits, reviews and appeals, payment processing, etc).

98. Like the Discovery Contract, the Administration contract indicates that counties and municipalities have illegally delegated the responsibility of providing TBOR-compliant Administrative Reviews and Administrative Appeals to RDS.

99. A portion of RDS' compensation under the Administration contract is contingent upon the amount of tax collected from taxpayers, or stated another way, such compensation is waived or not paid if less than a certain amount of taxes are collected (the "Administration Contingency Fee"). The Administration Contingency Fee is earned each time RDS collects and processes a tax payment. The Administration Contingency Fee typically equals \$2.00 per transaction processed. In violation of *Ala. Admin. Code* § 810-14-1-.36, RDS agrees to waive or not receive fees to the extent they exceed a percentage of taxes collected (typically 1.50% or 1.85%). RDS is incentivized to process a greater number of returns at higher tax rates and categories to maximize its fees.

100. The Administration Contract authorizes RDS to determine the amount of taxes owed by a taxpayer in the following ways: (A) by determining whether a taxpayer has taxable nexus with the Taxing Jurisdiction, (B) by conducting an examination of a taxpayer's books and records, (C) by determining whether a taxpayer has remitted the proper amount of tax, (D) by determining whether a taxpayer has remitted an underpayment of tax, (E) by determining a taxpayer has overpaid a tax, (F) by determining whether a taxpayer has remitted a late payment of tax, and (G) by determining whether to waive penalties against a taxpayer. All such authority is impermissible because RDS collects taxes pursuant to the Administration Contract.

101. If RDS determines that a taxpayer underpaid the tax or remitted a late payment, RDS sends an invoice to the taxpayer for additional amounts of tax determined to be owed to the Taxing Jurisdiction. (See Section A(4) of Exhibit D). This process violates TBOR. RDS should refer these issues to the Taxing Jurisdiction for its determination of the proper amount of tax owed.

102. The invoices sent by RDS to taxpayers constitute the entry of either preliminary assessments or final assessments.

103. Taxpayers are not informed, however, that the invoices constitute either preliminary assessments or final assessments, or that the taxpayer has a right to challenge the invoice-assessment under TBOR.

104. Each of the determinations made by RDS under the Administration Contract directly affects the amount of tax owed by a taxpayer and the amount of revenues enjoyed by RDS from the Administration Contract.

105. The Administration Contract constitutes a Bounty Hunter contract because it is a contract or arrangement that authorizes RDS to examine a taxpayer's books and records, on one hand, and then receive compensation contingent upon or otherwise related to the amount of tax assessed against or collected from taxpayers, on the other. Alternatively, the Administration Contract constitutes a Bounty Hunter contract because it is a contract or arrangement for collections that authorizes RDS to *determine the amount of tax* owed by a taxpayer, and then receive compensation contingent upon or otherwise related to the amount of tax assessed or collected from a taxpayer

106. In jurisdictions that contract with RDS under both the Discovery Contract and the Administration Contract, the contracts constitute a single Bounty Hunter contractual "arrangement" that is void and unenforceable under TBOR.

107. PRA and RDS have benefited greatly from the violations of law committed by Defendants under the Administration Contract. PRA receives dividends and distributions from RDS revenues that were illegally obtained from Alabama taxpayers.

#### **D. Fidelity and Faithful Performance Bonds**

108. RDS has failed to satisfy a single Bond Requirement. Therefore, RDS is in violation of TBOR. Therefore, the Discovery Contracts, Administration Contracts and all other contracts and arrangements between RDS and Taxing Jurisdictions are deemed terminated as of the date RDS first utilized an unbonded examiner. TBOR does not mandate that a taxpayer sustain an actual loss or assert a claim prior to challenging the sufficiency of the bond.

109. As a further consequence of failing to meet the Bond Requirements, TBOR mandates that RDS' license granted pursuant to *Ala. Code* § 40-12-43.1 is due to be forfeited for a period of six (6) months.

#### **E. Administrative Reviews and Administrative Appeals**

110. In violation of Article XI Section 212 of the Alabama Constitution, the Discovery Contract and Administration Contract confer upon RDS the authority and obligation to perform Administrative Reviews and Administrative Appeals. Despite this unconstitutional delegation, RDS fails or refuses to provide Administrative Reviews and Administrative Appeals to some or all taxpayers.

111. To the extent RDS does provide Administrative Reviews and Administrative Appeals to some taxpayers, those Administrative Reviews and Administrative Appeals are conducted by RDS in violation of TBOR.

112. Rebecca Adams ("Adams"), head of RDS' auditing and administrative review department, is responsible for overseeing Administrative Reviews conducted by RDS. Adams reports directly to an officer of MuniServices, a subsidiary of PRA regularly engaged in *contingency-fee* discovery/recovery services and audits in

California. Remarkably, MuniServices is charged with ensuring that RDS operations comply with TBOR (which prohibits contingency fees). Plaintiffs submit that this structure is the proverbial fox guarding the hen house.

113. Once a taxpayer requests an Administrative Review, Adams assigns the crucial role of “hearings officer” to an individual who regularly performs services for RDS as an auditor. RDS’ hearings officers receive no special schooling or additional education to qualify them to serve as a hearings officer. RDS hearing officers are required to review the work of their colleagues. RDS hearings officers are also put in the awkward position of reviewing audits and findings overseen by Adams, their superior.

114. Administrative Reviews conducted by RDS are typically conducted without any presence or participation from Adams or any official from the applicable Taxing Jurisdiction.

115. During Administrative Reviews, RDS hearings officers incorrectly apply an RDS-friendly standard of review that is not contemplated in TBOR. To wit, RDS hearings officers believe the results of preliminary assessments are to be deemed “prima facie correct” during the Administrative Review. Importantly, TBOR provides for no such standard of review during an Administrative Review.

116. At the conclusion of an Administrative Review, the hearings officer will issue a memorandum opinion of his or her findings. The memorandum is characterized by RDS hearings officers as a “recommendation” (the “Review Recommendation”) that is intended for Adams’ sole consideration. Hearings officers believe that the Review Recommendation will be duly considered by Adams, then accepted or rejected in whole or in part.

117. Although Adams is vested with the ultimate authority and responsibility to accept or reject the Review Recommendation, she summarily and routinely adopts the Review Recommendations from the hearings officer without substantive review. Such a failure or refusal to properly consider the Review Recommendation (a) deprives taxpayers of due process, and cannot result in fair treatment for taxpayers, and (b) illustrates the dysfunctional nature of RDS' Administrative Review process.

118. After rubber stamping the Review Recommendation, Adams enters a final assessment against the taxpayer. A copy of a Notice of Final Assessment issued by RDS is attached hereto as Exhibit E. Importantly, the Notice of Final Assessment is prepared, approved, signed and entered by Adams and another employee of RDS; nowhere does the Taxing Jurisdiction or its officers sign and enter the assessment.

119. Except for when Adams herself conducts an Administrative Review, a taxpayer has no opportunity to present arguments directly to Adams as the chief hearings officer and ultimate decider of tax.

120. RDS has taken the position that it is not bound by the provisions of TBOR and recent case law<sup>10</sup> which guarantee a taxpayer a right to an Administrative Appeal. Alternatively, RDS intentionally misleads taxpayers into believing that Administrative Appeals are unavailable. For instance, the typical Notice of Final Assessment issued by RDS informs taxpayers of their right to appeal to circuit court, but omits any reference to an Administrative Appeal through RDS. The Notice of Final Assessment states in pertinent part:

You have the right to appeal this assessment to circuit court. The appeal must be made within thirty (30) days of the final assessment date and

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<sup>10</sup> See *GMAC v. City of Red Bay*, 894 So. 2d 650, 653 (Ala. 2004).

pursuant to the provisions of Act 92-186. *See attached for additional explanation of your appeal rights.*

121. The attachment of appeal rights referred to in the preceding paragraph consists of a one page document entitled “Final Assessment of Appeal Rights Code of Alabama 1975, 40-2A-7(5) (the “Summary of Appeal Rights)” (sic). An ambitious taxpayer who attempted to research the cited statute, instead of relying on the Summary of Appeal Rights, would discover that TBOR does not include a Section 40-2A-7(5).

122. Like the Notice of Appeal, the Summary of Appeal Rights details the procedures for filing an appeal in circuit court, but omits any reference to an Administrative Appeal. On information and belief, RDS has purposefully omitted any reference to an Administrative Appeal in order to force a quick dispensation of the case.

123. A taxpayer reading a Notice of Final Assessment and the Summary of Appeal Rights would likely conclude that the only forum for appeal is circuit court (where the tax, interest and penalties must be paid in full or the supersedeas bond must be posted). Therefore, RDS has willfully deprived taxpayers of a right to an Administrative Appeal (where no tax or bond are required).

#### **F. Prohibited Compensation**

124. RDS pays Prohibited Compensation to its employees and agents, including Discovery Analysts, Adams, hearings officers and audit administrators. Each RDS employee’s or agent’s bonus plan is under the control and supervision of PRA in Norfolk, Virginia. PRA is, therefore, charged with ensuring that such bonus plan will not violate TBOR.

125. The Prohibited Compensation paid to Discovery Analysts includes a monthly bonus based on a percentage of total contingency fee revenues collected by

Discovery Analysts for any given month. This bonus pool is unique to Discovery Analysts and is not generally available to other employees of RDS.

126. The Prohibited Compensation paid to Adams includes an annual incentive bonus. Adams' bonus is awarded through an incentive compensation plan reserved exclusively for management level employees (the "Management Bonus Plan"). The amount of Prohibited Compensation paid to employees of RDS pursuant to the Management Bonus Plan is determined by PRA.

127. Adams' unwillingness to overturn RDS hearing officers appears to be directly tied to the Prohibited Compensation she receives in her capacity as the chief hearings officer.

128. The revenues or profits from which the Management Bonus Plan is paid are derived from tax revenues collected by RDS, and specifically include contingency fee revenues paid to RDS pursuant to the Discovery Contracts and the Administration Contracts. Accordingly, those contingency fee revenues are a component of the Management Bonus Plan and offer incentives based on tax collections.

129. Moreover, a ruling for a taxpayer on an Administrative Review could adversely affect Adams' compensation under the Management Bonus Plan and the bottom line performance of her employer, RDS. It is noteworthy that in cases where a business license tax assessment originates through RDS' Discovery department, as much as fifty cents of every dollar of tax, interest or penalty struck from a preliminary assessment as a result of an Administrative Review would represent lost revenues for RDS.

### **G. Disparate Taxpayer Success Rates**

130. The lack of objectivity and impartiality created by RDS' Prohibited Compensation scheme, coupled with the profit-driven Bounty Hunter contracts, have resulted in a shockingly low taxpayer success rate on administrative remedies sought through RDS. On information and belief, RDS hearings officers overrule only 1 out of every 500 audits performed by RDS. Accordingly, a taxpayer has an approximately .2% chance of prevailing on an administrative remedy sought through RDS. Remarkably, on information and belief, RDS' president believes this low taxpayer success rate is consistent with taxpayer success rates nationwide.

131. By comparison, according to the Administrative Law Division of ADOR, taxpayers successfully obtained refunds in 45% of the administrative appeals conducted by and through the Administrative Law Division from 1995 through 2008. (See cover letter and spreadsheet of statistics from ADOR attached hereto as Exhibit F). Thus, in an unbiased hearing, a taxpayer is two hundred and twenty-five (225) times more likely to find success at ADOR than in front of RDS. The difference in the two rates is staggering and is attributable to RDS' Prohibited Compensation scheme and its profit-driven Bounty Hunter contracts.

### **H. Other Violations**

132. RDS utilizes employees, agents, Discovery Analysts, auditors and hearings officers who are unfamiliar with TBOR, applicable regulations promulgated by ADOR, and the A.G. Opinion. Their unfamiliarity with applicable law has contributed to RDS' violation of law and of taxpayers' rights.

133. Some, if not most, Discovery Contracts and Administration Contracts have initial terms greater than three years, which violates TBOR's three-year limitation on examination and collection contracts. *Ala. Code* § 40-2A-12. All services provided after the third year of such Administration Contract or Discovery Contract are illegal. The Administration Contract attached hereto as Exhibit D contains an illegal five year term.

134. Ironically, RDS' contract auditors and examiners do not have valid business licenses in Taxing Jurisdictions where they perform services under the Administration Contract.

135. RDS has hired C2C to perform commercial collection services for RDS. C2C and its agents regularly make demands upon Smith to pay the taxes illegally assessed against WRS. Moreover, RDS and C2C have improperly placed tax liens on Smith's personal real estate for nonpayment of taxes illegally assessed against WRS (by virtue of the February 28, 2007 Agreement to Entry of Final Assessment against WRS). C2C collection of the illegal taxes are in violation of TBOR.

## **VI. CLASS ALLEGATIONS**

136. Plaintiffs bring this action individually and as representatives of the Class, which is defined as all Alabama citizens in Alabama or Alabama business in Alabama entities that (A) have had taxes assessed or collected by or through RDS or its agents, (B) have had tax returns or tax information processed by RDS, (C) have received a Payment Letter or other communication in the form of an assessment from RDS or its agents, (D) have been audited or examined by RDS or its agents, (E) have had liens placed on their property by or through RDS or its agents, (F) have participated in Administrative

Reviews or Administrative Appeals conducted by RDS or its agents, or (G) have been deprived of an Administrative Review or Administrative Appeal by RDS or its agents, as further described above. Excluded from the Class are Defendants, their affiliates, agents, employees, representatives, and legal counsel.

137. Numerosity (Ala.R.Civ.P.23(a)(1)): The members of the Class are so numerous and geographically dispersed that joinder of all members is impracticable. On information and belief, Plaintiffs allege that there are thousands of members of the Class in the Taxing Jurisdictions throughout Alabama.

138. Commonality (Ala.R.Civ.P.23(a)(2)): Common questions of law and fact exist as to all members of the Class. These common questions include, but are not limited to:

- a. Whether the delegation of certain tax related activities as defined herein violates the Alabama Constitution and taxpayers' due process rights;
- b. Whether the Discovery Contract and Administration Contract are void *ab initio* pursuant to TBOR;
- c. Whether preliminary assessments and final assessments of tax entered by RDS are void pursuant to TBOR;
- d. Whether RDS has failed or refused to conduct Administrative Reviews and Administrative Appeals in violation of TBOR;
- e. Whether Administrative Reviews and Administrative Appeals conducted by RDS were conducted in violation of TBOR;
- f. Whether RDS wrongfully represents and indicates that the only forum to appeal a final assessment is in circuit court;

- g. Whether RDS pays Prohibited Compensation to its employees and agents in violation of TBOR;
- h. Whether the due process, contract and other constitutional rights of Plaintiffs and others similarly situated have been violated by the actions of Defendants as described herein;
- i. Whether PRA and MuniServices have approved, condoned and/or benefited from violations of TBOR and other laws by RDS;
- j. Whether Defendants fail to meet and comply with the statutory Bond Requirements; and
- k. Whether Defendants must disgorge all such amounts imposed, collected, and received by Defendants related to any void taxes specified herein and whether Defendants must cease such imposition, collection and receipt of such void taxes.

139. Typicality (Ala.R.Civ.P.23(a)(3)): Plaintiffs' claims are typical of the claims of absent members of the Class in that Plaintiffs' claims and damages arise out and relate to the same practices Plaintiffs are challenging on behalf of the Class.

140. Adequacy of Representation (Ala.R.Civ.P.23(a)(4)): The named Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have no interests that are antagonistic to the absent class members. Plaintiffs are represented by capable counsel that have experience in complex, class litigation.

141. Rule 23(b)(1)(A) Class: Class certification is appropriate under Ala. R. Civ. P. 23(b)(1)(A) because the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to

individual members of the class which establish incompatible standards of conduct for Defendants.

142. Rule 23(b)(2) Class: Class certification is also appropriate under Ala. R. Civ. P. 23(b)(2) with respect to Plaintiffs' demands for injunctive and declaratory relief against Defendants because Defendants have acted on grounds generally applicable to the Class as a whole, thereby making injunctive and declaratory relief appropriate.

143. Rule 23(b)(3) Class: Class certification is also appropriate under Ala. R. Civ. P. 23(b)(3) with respect to Plaintiffs' demands for damages because common questions of fact or law will predominate in determining the outcome of this litigation and because maintenance of the action as a class action is a superior manner in which to coordinate the litigation.

**COUNT ONE**  
**Declaratory Judgment-Unconstitutional Delegation**

144. Plaintiffs adopt and incorporate all previous allegations in full.

145. As described herein, the taxing and appeal-resolution authority delegated to RDS under the Discovery Contract and Administrative Contract violates the Alabama Constitution and Plaintiffs' right to due process on a fundamental level. Article XI, Section 212 of the Alabama Constitution states clearly that "the power to levy taxes shall not be delegated to individuals or private corporations or associations." Flowing from this constitutional provision is the notion that inherently governmental functions, particularly those requiring application of tax laws and the exercise of discretion (i.e., the entry of tax assessments and the adjudication of administrative tax appeals), may not be delegated or outsourced to private firms, including those organized under foreign laws, like RDS.

146. TBOR's provisions are consistent with this constitutional principle; nowhere in TBOR is a private firm authorized to engage in tax administration beyond (i) the mere collection of taxes determined to be due by the local taxing authority and (ii) the rendering of auditing and accounting support services to local taxing authorities. TBOR reserves the inherently governmental aspects of tax administration to the state and local governments in Alabama. The business model employed by RDS, including RDS's Discovery Contract and Administration Contract, plainly violate the letter and spirit of TBOR by allowing a foreign limited liability company (and its numerous subcontractors of unknown domicile) to enter a tax assessment against, and decide the tax appeal of, Alabama citizens and Alabama businesses.

147. This business model and the RDS contracts represent an unconstitutional delegation of authority to RDS, pitting the desire for private profits against the public good. Consequently, Plaintiffs, on behalf of themselves and the putative class, request the Court to enter an Order declaring, on behalf of Alabama citizens and entities, that the RDS business model described herein, and its Discovery Contracts and Administrative Contracts relating thereto, violate Article IX Section 212 of the Alabama Constitution and the due process rights of Alabama citizens and Alabama entities.

**COUNT TWO**  
**Declaratory Judgment-Discovery Contract**

148. Plaintiffs adopt and incorporate all previous allegations in full.

149. As previously alleged, under RDS' Discovery Contract, Plaintiffs and taxpayers located within and without each Taxing Jurisdiction constitute intended third-party beneficiaries.

150. RDS' Discovery Contracts and business practices related thereto are violative of TBOR and related Alabama law for the reasons outlined previously in paragraphs 51 through 94, including, but not limited to:

- a. RDS' Discovery Contracts constitute improper Bounty Hunter contracts that are void pursuant to TBOR;
- b. The compensation scheme contemplated under RDS' Discovery Contracts renders such contracts void pursuant to TBOR;
- c. Under its Discovery Contracts, RDS makes illegal determinations as to amounts of taxes owed in violation of TBOR;
- d. RDS improperly utilizes the Payment Letter (which constitutes the entry of a preliminary or final tax assessment), Application, and Hotline to determine and obtain amounts of taxes in violation of TBOR;
- e. The Administrative Review and Administrative Appeal process conducted and/or contemplated under RDS' Discovery Contracts is violative of TBOR; and
- f. The Discovery Contract and Administration Contract together constitute a single "arrangement" between RDS and a Taxing Jurisdiction.

151. Because RDS' Discovery Contracts are void and its business practices related thereto are improper, RDS' and its agents' performance under those contracts are unauthorized and have resulted in invalid assessments, invalid liens, invalid levies, illegally collected taxes, and illegitimate administrative practices.

152. Therefore Plaintiffs, on behalf of themselves and the putative class, request the Court enter an Order declaring, on behalf of all Alabama citizens and entities,

that RDS' Discovery Contracts and arrangements are void and unenforceable pursuant to TBOR, that Defendants' practices conducted in relation to its Discovery Contracts are common, uniform, improper, and violative of TBOR and related Alabama law as alleged in this Complaint, and determine and declare that any and all tax assessments, liens, levies, and collections performed in relation to Defendants' Discovery Contracts are invalid, void, and constitute unlawful takings.

**COUNT THREE**  
**Declaratory Judgment - Administrative Contract**

153. Plaintiffs adopt and incorporate all previous allegations in full.

154. As previously alleged, under the Administrative Contract, Plaintiffs and taxpayers located within and without each Taxing Jurisdiction constitute intended third-party beneficiaries.

155. RDS' Administrative Contracts and business practices related thereto are violative of TBOR and related Alabama law for the reasons outlined previously in paragraphs 95 through 107 including, but not limited to:

- a. RDS' Administrative Contracts constitute improper Bounty Hunter contracts that are void pursuant to TBOR;
- b. The compensation scheme contemplated under RDS' Administrative Contracts renders such contracts void pursuant to TBOR;
- c. Under its Administrative Contracts, RDS makes illegal determinations as to amounts of taxes owed in violation of TBOR;
- d. RDS improperly utilizes its invoices (which constitute the entry of a preliminary or final tax assessment) to determine and obtain amounts of taxes in violation of TBOR;

- e. The Administrative Review and Administrative Appeal process conducted and/or contemplated under RDS' Administrative Contracts is violative of TBOR; and
- f. The Discovery Contract and Administration Contract together constitute a single "arrangement" between RDS and a Taxing Jurisdiction.

156. Because RDS' Administrative Contracts are void and its business practices related thereto are improper, RDS' and its agents' performance under those contracts are unauthorized and have resulted in invalid assessments, invalid liens, invalid levies, illegally collected taxes and illegitimate administrative practices.

157. Therefore, Plaintiffs, on behalf of themselves and the putative class, request the Court enter an Order declaring, on behalf of all Alabama citizens and entities, that RDS's Administrative Contracts and arrangements are void and unenforceable pursuant to TBOR, that Defendants' practices conducted in relation to its Administrative Contracts are common, uniform, improper, and violative of TBOR and related Alabama law as alleged in this Complaint, and determine and declare that any and all tax assessments, liens, levies, and collections performed in relation to Defendants' Administrative Contracts are invalid, void, and constitute unlawful takings.

**COUNT FOUR**  
**Declaratory Judgment - Prohibited Compensation**

158. Plaintiffs adopt and incorporate all previous allegations in full.

159. As previously alleged, RDS' Discovery and Administrative Contracts are void and violative of TBOR because RDS and its agents or employees receive fees that are contingent upon, or related to, the amount of taxes assessed or collected from taxpayers. Further, RDS' Discovery and Administrative Contracts formulate the basis for

the payment of Prohibited Compensation in violation of TBOR. As alleged in paragraphs 124 through 129, RDS routinely compensates employees, including Discovery Analysts, hearing officers and auditors, through incentive bonuses in clear violation of TBOR.

160. Therefore Plaintiffs, on behalf of themselves and the putative class, request that the Court enter an Order declaring, on behalf of all Alabama citizens and entities, that RDS' compensation scheme to itself and to its employees or agents is violative of TBOR and related Alabama law, that such arrangements and business practices are void and unenforceable under TBOR, and determine and declare that any and all tax assessments, liens, levies, and collections performed by Defendants are invalid, void, and constitute unlawful takings.

**COUNT FIVE**  
**Declaratory Judgment - Bond Requirements**

161. Plaintiffs adopt and incorporate all previous allegations in full.

162. As previously outlined herein, TBOR establishes requirements for Private Firms to follow with respect to bonding.

163. As previously alleged herein, PRA and RDS have violated the Bond Requirements by failing and/or refusing to obtain fidelity and faithful performance bonds for each of their examiners as required under TBOR.

164. Therefore Plaintiffs, on behalf of themselves and the putative class, request the Court enter an Order declaring, on behalf of all Alabama citizens and entities, that PRA and RDS have failed to meet or comply with the Bond Requirements of TBOR and that, in accordance with TBOR, RDS' Discovery Contracts and Administrative Contracts are void and deemed terminated as of the date RDS first utilized an un-bonded examiner; that all assessments made pursuant to such contracts, arrangements or practices

are void; and that RDS forfeits its license for a period of six (6) months for each violation.

**COUNT SIX**  
**Unjust Enrichment**

165. Plaintiffs adopt and incorporate all previous allegations in full.

166. Under the circumstances outlined in this Complaint, Defendants have been unjustly enriched by virtue of their improper business practices and widespread and systematic violations of TBOR and related Alabama law at the expense of Alabama taxpayers. It would be inequitable and unjust for Defendants to retain such ill-gotten gains, which Defendants have received as a result of their improper business practices and systematic and common violations of TBOR and related Alabama law.

167. Accordingly, Plaintiffs request this Court impose a constructive trust on those monies by which Defendants have been unjustly enriched as a result of the improper practices described herein.

**COUNT SEVEN**  
**Negligence, Recklessness and/or Wantonness**

168. Plaintiffs adopt and incorporate all previous allegations in full.

169. Defendants owe Plaintiffs and class members a duty to administer taxes on behalf of counties and municipalities in accordance with the mandates of TBOR, the Alabama Constitution, and related Alabama law. As described in this Complaint, Defendants have breached duties owed to Plaintiffs and class members by engaging in business practices, contractual arrangements and supervisory actions which violate applicable Alabama law and deprive taxpayers of their right to be treated fairly and impartially.

170. As a proximate result of Defendants' breach of duties owed to Plaintiffs and class members, Plaintiffs and class members have been damaged and victimized by Defendants improper tax assessments, liens, levies, audits, collections, and administrative actions targeted at Alabama taxpayers.

171. As a result of Defendants' negligence, recklessness and/or wantonness, Plaintiff and class members seek any and all available compensatory damages, including a disgorgement of all monies improperly assessed and collected, as well as such additional amounts as may be necessary to compensate victims of Defendants' improper practices.

**COUNT EIGHT**  
**Injunctive Relief**

172. Plaintiffs adopt and incorporate all previous allegations in full.

173. Plaintiffs, on behalf of themselves and the putative class, seek injunctive relief enjoining Defendants from engaging in any conduct that is declared by this Court, or that it otherwise found to be, violative of TBOR, the Alabama Constitution, or controlling statutory law in Alabama. Additionally, Plaintiffs, on behalf of themselves and that putative class, seek injunctive relief: (A) enjoining Defendants from engaging in any further conduct that is declared by this Court, or that is otherwise found to be, improper, illegal, or violative of TBOR, the Alabama Constitution, or related statutory law in Alabama; (B) invalidating and removing all liens against real and personal property of Plaintiffs and taxpayers imposed by Defendants where such liens are declared by this Court, or that are otherwise found to be, improper, illegal, or violative of TBOR, the Alabama Constitution, or related statutory law in Alabama; (C) returning all real and personal property of Plaintiffs and taxpayers seized, controlled, or in the possession of

Defendants where such actions are declared by this Court, or that are otherwise found to be, improper, illegal, or violative of TBOR, the Alabama Constitution, or related statutory law in Alabama; (D) enjoining Taxing Jurisdictions from using or relying upon taxpayer information obtained, directly or indirectly, from Defendants pursuant to the Discovery Contracts and Administration Contracts that are declared void by this Court; and (E) mandating Defendants to recoup taxes remitted to Taxing Jurisdictions through the Discovery Contracts or Administration Contracts declared void by this Court.

**COUNT NINE**  
**Violation of Due Process**

174. Plaintiffs adopt and incorporate all previous allegations in full.

175. Defendants' contractual arrangements and business practices described herein violate Alabama law and deprive taxpayers of due process rights afforded to them under the Alabama Constitution. As described in this Complaint, RDS and other Defendants have violated due process rights afforded to Plaintiffs and class members under the Alabama Constitution in the following ways:

- a. by exercising the power to tax in contravention of Article XI Section 212 of the Alabama Constitution;
- b. by entering into illegal and void contractual arrangements with counties and municipalities;
- c. by entering invalid assessments of tax;
- d. by conducting illegitimate Administrative Reviews;
- e. by denying taxpayers of their rights to Administrative Appeals;
- f. by misleading taxpayers into believing the only forum for an appeal of a final assessment is to circuit court;

- g. by receiving fees that are contingent upon, or related to, the amount of taxes assessed or collected from taxpayers;
- h. by compensating employees through incentive bonuses barred by TBOR;
- i. by failing or refusing to obtain fidelity and faithful performance bonds for each RDS examiner as required by TBOR;
- j. by unlawfully converting taxpayer property through illegitimate assessments and collections;
- k. by unlawfully seizing, taking and impairing a taxpayer's property without due process, and slandering the title to such property, through liens and subsequent levy without authority;
- l. by applying a nonexistent and unduly burdensome standard of review to taxpayers during Administrative Reviews; and
- m. by committing other wrongful acts.

176. As a result of Defendants' violation of Plaintiffs' due process rights, Plaintiffs and class members seek any and all available relief, damages, and remedies, including disgorgement of all monies improperly assessed and collected in violation of due process rights afforded to them under the Alabama Constitution.

**COUNT TEN**  
**Disgorgement**

177. Plaintiffs adopt and incorporate all previous allegations in full.

178. Under the circumstances outlined in this Complaint, Defendants have profited at the expense of Plaintiffs through Defendants' illegal activity and widespread and systematic violations of TBOR, the Alabama Constitution, and other applicable Alabama laws.

179. Accordingly, Defendants should be disgorged of all revenues and profits which Defendants have received as a result of their systematic and common violations of TBOR, the Alabama Constitution, and related Alabama laws and required to pay interest on those revenues and profits.

**COUNT ELEVEN**  
**Breach of Contract**

180. Plaintiffs adopt and incorporate all previous allegations in full.

181. Assuming arguendo that the Discovery Contracts and Administration Contracts are not void, Defendants have breached those contracts.

182. As previously alleged, under the Discovery Contracts and Administration Contracts, Plaintiffs and taxpayers located within and without each Taxing Jurisdiction constitute intended third-party beneficiaries.

183. As a result of Defendants' systematic and widespread breach of these contracts, as set forth and outlined in this Complaint, Plaintiffs have been damaged.

184. Plaintiffs and class members seek any and all available compensatory damages, including a disgorgement of all monies improperly assessed and collected, as well as such additional amounts as may be necessary to compensate victims of Defendants' improper practices.

**COUNT TWELVE**  
**Slander of Title**

185. Plaintiffs adopt and incorporate all previous allegations in full.

186. Through their systematic, widespread, and illegal practices and violations of TBOR and other Alabama laws, Defendants have issued invalid tax assessments and

have attached, with malicious intent, improper liens to real and personal property owned by Plaintiffs and other class members to which Defendants have no colorable claim.

187. As a result of Defendants' illegal actions, Defendants have slandered the title to real and personal property owned by Plaintiffs and other Class members.

188. As a result of Defendants' slander of title, Plaintiffs and class members seek any and all available compensatory damages, including a disgorgement of all monies improperly assessed and collected, as well as such additional amounts as may be necessary to compensate victims of Defendants' improper practices.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray as follows:

A. That this Honorable Court determine that this action may be maintained as a class action under Rule 23 of the Alabama Rules of Civil Procedure;

B. That judgment be entered for Plaintiffs and members of the Class against Defendants for wrongful conduct and violations of Alabama as requested in this Complaint;

C. That the Court award injunctive relief against Defendants in the form requested in this Complaint;

D. That the Plaintiffs and the Class be awarded interest at the highest legal rate available under law related to amounts illegally assessed and collected from Plaintiffs as requested in this Complaint;

E. That attorneys for Plaintiffs be awarded attorney's fees and that Plaintiffs be awarded court costs; and

F. That the Plaintiffs and members of the Class have such other, further or different relief as the case may require and the Court may deem just and proper under the circumstances.

**PLAINTIFFS DEMAND TRIAL BY STRUCK JURY**

/s/ R. Brent Irby

R. Brent Irby

OF COUNSEL:

Charles A. McCallum, III  
McCallum, Hoaglund, Cook & Irby, LLP  
905 Montgomery Highway, Suite 201  
Vestavia Hills, Alabama 35216  
Telephone: (205)824-7767  
Facsimile: (205)824-7768  
Email: [birby@mhcilaw.com](mailto:birby@mhcilaw.com) and [cmccallum@mhcilaw.com](mailto:cmccallum@mhcilaw.com)

OF COUNSEL:

M. Dale Marsh  
Marsh, Cotter & Stewart, LLP  
Post Office Box 310910  
Enterprise, Alabama 36331

**PLEASE SERVE DEFENDANTS VIA CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED AS FOLLOWS:**

PRA GOVERNMENT SERVICES, LLC  
c/o National Registered Agents, Inc.  
150 South Perry Street  
Montgomery, Alabama 36104

PORTFOLIO RECOVERY ASSOCIATES, INC.  
c/o National Registered Agents, Inc.  
150 South Perry Street  
Montgomery, Alabama 36104

C2C Resources, LLC  
c/o LexisNexis Document Solutions, Inc.  
40 Technology Parkway South  
#300  
Norcross, Georgia 30092

Muniservices, LLC  
c/o National Registered Agents, Inc.  
160 Greentree Drive  
Suite 101  
Dover, Delaware 19904



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9/17/2010 2:56 PM  
CV-2010-903417.00  
CIRCUIT COURT OF  
JEFFERSON COUNTY, ALABAMA  
ANNE-MARIE ADAMS, CLERK

# **EXHIBIT A**



2317 Third Avenue North, Suite 200  
Birmingham, Alabama 35203

## NOTICE OF TAX LIEN

800.556.7274 • 205.324.0088 • 205.423.4099 fax

www.revds.com

Sections 40-28-20, et seq., Code of Alabama 1975, which became effective on January 1, 1984,  
Requires that tax liens of the State of Alabama be recorded in the places indicated below:

Filed in the office of Judge of Probate:

Jefferson County Probate  
716 Richard Arrington Jr Blvd N  
Birmingham, AL 35203



20090223000227850 1/1  
Bk: LR200960 Pg:23312  
Jefferson County, Alabama  
I certify this instrument filed on  
02/23/2009 11:51:27 AM NOTICE  
Judge of Probate- Alan L. King

### NOTICE OF TAX LIEN FOR RDS, A DULY AUTHORIZED REPRESENTATIVE OF MULTIPLE JURISDICTIONS WITHIN THE STATE OF ALABAMA

Taxpayer: I.D. 63-0399307

**Address:**

David L. Smith  
DBA Washer & Refrigeration Supply Co Inc  
PO Box 10181  
Birmingham, AL 35202

Parcel Numbers: 29-17-4-1-20-RR-0, 39.3.3.1.3.002.RR.0, 39.3.3.1.4.RR.0, 39.3.4.2.3.RR.0, 39.3.4.2.4.RR.0

**Mailing address:**

Washer & Refrigeration Supply Co Inc  
PO Box 10181  
Birmingham, AL 35202

20090223000227850 1/1  
Bk: LR200960 Pg:23312  
Jefferson County, Alabama  
02/23/2009 11:51:27 AM NOTICE  
Fee - \$5.00

Total of Fees and Taxes-\$5.00  
MHBESS

Kind of Tax: Sales Tax  
4/01/2003-3/31/2006

Amount of Lien\*: \$ 61,172.35

Other charges. Additional interest accrues at  
Prevailing rate.

Pursuant to the Tax Enforcement and Compliance Act, Sections 40-29-20, et seq., Code of Alabama 1975, RDS, Inc. a  
duly authorized representative of jurisdictions within the State of Alabama certifies that the above-named Taxpayer is  
indebted to multiple jurisdictions in the above amount for the payment of which the County claims a lien upon all  
property and rights to property belonging to said Taxpayer. DONE on this the 17th day of February 2009.

BY: \_\_\_\_\_  
Charles S. Dear  
Authorized Representative  
RDS

This instrument was acknowledged before me  
on the 17th day of February 2009. This  
person is personally known to me or has  
produced proper identification.

*Sherrill E. Jones*  
Notary Public - State at Large  
State of Alabama



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JEFFERSON COUNTY, ALABAMA  
ANNE-MARIE ADAMS, CLERK

# **EXHIBIT B**



## Revenue Enhancement Services

MuniServices protects  
general fund revenues by  
using comprehensive  
revenue enhancement tools.

Pricing:

% - Contingency Fee

\$ - Fixed Fee

/ - Complimentary

### Business License

- Discovery, Compliance and Audit - %
- Administration - \$

### Sales Tax

- Audit & Representation - %
- Information & Reporting Service - \$

### Property Tax

- City & Redevelopment Agency Audit - %
- Document Transfer Tax - %
- Consulting Services & Management Software - \$

### Utility Users Tax & Franchise Fee

- UUT Protection & Audit - \$
- Franchise Fee Audit - \$

### TOT

- Compliance Review - \$
- Audit Service - \$

### Consulting

- Economic Development - \$
- Alternative Fuel - %
- Government Relations - /



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JEFFERSON COUNTY, ALABAMA  
ANNE-MARIE ADAMS, CLERK

# **EXHIBIT C**

## Tax Revenue Enhancement Agreement Business License Discovery/Recovery

This agreement made as of the 9<sup>th</sup> day of July 2007, by and between PRA Government Services d/b/a AlaTax (and/or its affiliates) and City of Alabama, an Alabama CITY ("CITY").

### A. Business License Cross Examination Services

1. Cross Examination Services include:
  - i. Cross-examining two or more City lists. These lists could include: current business license data, sales tax data, property tax lists and telephone directories at least once a year.
  - ii. Properties/entities that are not in one or all of the databases are presumed unlicensed.
  - iii. AlaTax will generate a letter requiring payment, proof of payment, or an appeal for all properties/entities presumed unlicensed. If no response, AlaTax will call the property/entity before proceeding with assessment procedures. If no response to the letter or call, AlaTax will proceed with assessment procedures as allowed by City law.
2. Taxpayer Remittance: Taxpayers will remit payments to City of Alabama P.O. Box 830725, Birmingham, AL 35283-0725. Upon reasonable notice to CITY, AlaTax may change the P.O. Box for City of Alabama payments. CITY will be responsible for renewals. AlaTax will provide a list to CITY.
3. Deposit Process: Deposits are made to the extent that funds have been received, via Automated Clearing House of the amounts required by law to the designated recipients as instructed by the CITY in accordance with the law.
4. Posting Process: Taxpayer accounts are posted with payment information captured in the AlaTax revenue system. Additional information such as net sales, deductions, credit sales, measure of tax, name change and address change are captured and added to payment data and taxpayer master file (as determined necessary by AlaTax). Late payments (postmarked by U.S. Postal Service after due date) are invoiced at penalty amounts required by law. Under payments are invoiced for remaining tax due plus any required penalties.
5. Notification, Reporting to CITY:  
AlaTax will provide CITY with timely reports including, but not limited to, payment listings showing all monies received, a detail and summary reconciliation report that corresponds to CITY'S account numbers and all fees paid to AlaTax.

### B. General Provisions

1. Taxpayer service: AlaTax will provide a taxpayer assistance number for taxpayer questions.
2. Review and Appeal Process: AlaTax has adopted and will use a review and appeals process which is based on the Alabama Taxpayers' Bill of Rights Act and Uniform Revenue Procedures Act codified as Title 40, Chapter 2A, Code of Alabama, 1975, as amended.
3. Consideration for Cross Examination Services:
  - i. AlaTax Fee for Cross Examination Services: AlaTax will receive fifty percent (50%) of business license revenue collected by AlaTax.
  - ii. AlaTax fee for copies of business license applications: AlaTax will receive an amount equal to \$1.75 per business license application mailed or faxed to the City. AlaTax will provide at no additional cost a detailed payment listing that includes taxpayer name, address, schedule number, and license year.

4. **Company Audit:** Once a year AlaTax will have an auditor prepare an Independent Service Auditor's Report on Controls Placed in Operation and Tests of Operating Effectiveness. This report is commonly called a SAS 70 Type II report and will be made available upon request.
5. **Term of the Agreement:** This agreement shall be for a term of three years following the date of execution. Either party shall have the right to terminate this Agreement in the event of a material breach by the other party. Any such termination may be made only by providing ninety (90) days written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial ninety (90) days notice.
6. **Indemnity:** To the full extent allowed by law, CITY hereby agrees to indemnify and hold AlaTax harmless from any claims and against all costs, expenses, damages, claims and liabilities, relating to the determination of taxes due from taxpayers, the collection thereof and any refunding related thereto.
7. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written Agreement signed by both parties hereto.
8. **Invalidity:** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
9. **Effective Date:** The effective date for the performance of services under the terms of this agreement shall commence July 1, 2007.

IN WITNESS WHEREOF, the parties hereto as of the date first above written have duly executed this Agreement.

AlaTax

By: Kennan Valitah  
Its: President

City of

By:  
Its:

Proposed pricing contained herein valid for 60 days from date of issuance. Issued

AlaTax



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9/17/2010 2:56 PM  
CV-2010-903417.00  
CIRCUIT COURT OF  
JEFFERSON COUNTY, ALABAMA  
ANNE-MARIE ADAMS, CLERK

# **EXHIBIT D**

## Tax Revenue Enhancement Agreement Revenue Administration

This agreement made as of the 9<sup>th</sup> day of July 2007, by and between PRA Government Services d/b/a RDS/AlaTax (and/or its affiliates) and City of Alabama, an Alabama CITY ("CITY").

### A. Remittance Processing Services

1. Taxes Processed: RDS/AlaTax will perform remittance processing for sales, use and any other taxes designated by CITY.
2. Taxpayer Notification and Remittance: RDS/AlaTax will send individualized tax forms to all known taxpayers. Taxpayers will remit payments to City of P.O. Box 830725, Birmingham, AL 35283-0725. Upon reasonable notice to CITY, RDS/AlaTax may change the P.O. Box for City of payments.
3. Deposit Process: Deposits are made to the extent that funds have been received, via Automated Clearing House of the amounts required by law to the designated recipients as instructed by the CITY in accordance with the law providing for each type of tax collected.
4. Posting Process: Taxpayer accounts are posted with payment information captured in the RDS/AlaTax revenue system. Additional information such as net sales, deductions, credit sales, measure of tax, name change and address change are captured and added to payment data and taxpayer master file (as determined necessary by RDS/AlaTax). Late payments (postmarked by U.S. Postal Service after due date) are invoiced at penalty amounts required by State code. Under payments are invoiced for remaining tax due plus any required penalties.
5. Notification, Reporting to CITY:
  - i. RDS/AlaTax will provide CITY with monthly reports including, but not limited to, payment listings showing all taxes received, printout related to net receipts reported, a general ledger distribution that corresponds to CITY'S account numbers and all fees paid to RDS/AlaTax. These reports to be provided by the 10th of the month following the tax month.
  - ii. RDS/AlaTax will attend Council meetings at such times as may be reasonably requested by CITY.

### B. Compliance Services

1. Taxes Reviewed: RDS/AlaTax will perform compliance services for sales, use and other taxes designated by CITY under Remittance Processing Services. RDS/AlaTax will provide delinquency notification and follow-up. This includes correspondence, calls, and collection procedures and the related documentation. Delinquency policies and procedures will be applied consistently and within all applicable tax laws.
2. Conduct of Compliance Services: To assure that all taxpayers are treated fairly and consistently and all compliance services are performed in a similar manner, RDS/AlaTax representatives who perform compliance services will use a similar compliance plan for each compliance service conducted. All funds due from compliance services will be remitted to CITY in the same manner as provided for pursuant to Section A.3 above.

### C. General Provisions

1. Taxpayer service: RDS/AlaTax will provide a taxpayer assistance number for taxpayer questions. RDS/AlaTax will provide informational brochures for placement in CITY offices, Chamber of Commerce offices, libraries and any other facilities. This information will also be available on the Internet at [www.alatax.com](http://www.alatax.com).

RDS/AlaTax,  
City Contract 2007

2. Review and Appeal Process: RDS/AlaTax has adopted and will use a review and appeals process which is based on the Alabama Taxpayers' Bill of Rights Act and Uniform Revenue Procedures Act codified as Title 40, Chapter 2A, Code of Alabama, 1975, as amended.
3. Consideration for Remittance Processing Services, Revenue Analysis Services and Compliance Services: RDS/AlaTax will receive an amount equal to Two Dollars (\$2.00) per account per transaction OR 1.85% of gross revenues collected, whichever is lower for providing Remittance Processing Services and Revenue Analysis Services.
4. Audit Services:
  - i. RDS/AlaTax Audit Services: Audit Services include all preparation for the performance of an audit, any research or statistical analysis performed in relation to an audit, examination of the books and records of the taxpayer, an assessment of the amount due (if any), and all services related to closing an audit.
  - ii. RDS/AlaTax Fee: RDS/AlaTax will receive an amount based on an hourly rate of sixty dollars (\$60) for audit services, without any contingent fees whatsoever. If overnight travel outside the State of Alabama is required, RDS/AlaTax will pay the auditor, and bill the CITY for its portion of travel expenses. CITY agrees to pay the amount of these fees when due, regardless of any recovery.
    1. Billing Increment: Time will be recorded in 15-minute intervals (.25 hours);
    2. Shared Audit Fees: When audits for CITY overlap with audits for other RDS/AlaTax clients or clients of RDS/AlaTax Affiliates, the fees will be shared as follows:
      - a. Travel Time: travel time, expenses, and a daily per diem amount for each audit is distributed evenly among the clients reviewed for each audit.
      - b. Interview Time: time billed during the initial interview of each audit is distributed evenly amongst the clients reviewed for each audit – during this process the auditor determines which clients will actually be audited for and billed Audit Time as follows:
        - i. Audit Time: time billed during the actual audit stage of each audit is billed according to actual time spent working for each client.
        - ii. No Double Billing: In no event will the overlapping audits combined require payment for more than 100% for any one RDS/AlaTax representative.
5. Company Audit: Once a year RDS/AlaTax will have an auditor prepare an Independent Service Auditor's Report on Controls Placed in Operation and Tests of Operating Effectiveness. This report is commonly called a SAS 70 Type II report and will be made available upon request.
6. Term of the Agreement: This agreement shall be for a term of five years following the date of execution. Either party shall have the right to terminate this Agreement in the event of a material breach by the other party. Any such termination may be made only by providing ninety (90) days written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial ninety (90) days notice.
7. Indemnity: To the full extent allowed by law, CITY hereby agrees to indemnify and hold RDS/AlaTax harmless from any claims and against all costs, expenses, damages, claims and

liabilities, relating to the determination of taxes due from taxpayers, the collection thereof and any refunding related thereto.

8. Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written Agreement signed by both parties hereto.
9. Invalidity: If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
10. Effective Date: The effective date for the performance of services under the terms of this agreement shall commence July 1, 2007 with collection of June taxes to be remitted on or before July 20, 2007.

IN WITNESS WHEREOF, the parties hereto as of the date first above written have duly executed this Agreement.

RDS/AlaTax

By: Kennan Hatchell  
Its: President

City of

By:  
Its:



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CIRCUIT COURT OF  
JEFFERSON COUNTY, ALABAMA  
ANNE-MARIE ADAMS, CLERK

# **EXHIBIT E**

c/o RDS/AlaTax

-VS-

RDS/AlaTax  
COMPLIANCE DIVISION  
on behalf of

NOTICE OF  
FINAL  
ASSESSMENT

Code of Alabama 1975, 40-2A-7(b)(1)b

TYPE OF TAX: Business License  
TAX PERIOD: 2004-2008

ACCOUNT #  
TAXPAYER ID #

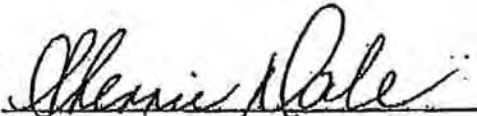
A Preliminary Assessment was entered on [REDACTED] and sent to you certified mail. You failed to file a Petition for Review of the Preliminary Assessment within the time allowed and the assessment is being made final. Under provisions of the Code of Alabama, 1975, as amended, the above listed jurisdiction enters a final assessment of the tax liability described:

ADDITIONAL TAX DUE .....  
PENALTY .....  
INTEREST .....  
LESS AMOUNT PAID .....  
BALANCE NOW DUE .....


You have the right to appeal this assessment to circuit court. The appeal must be made within thirty (30) days of the final assessment date and pursuant to the provisions of Act 92-186. See attached for additional explanation of your appeal rights.

Entered:

Assessment Prepared By:

  
Sherrie Dale, Audit Administrator

Assessment Approved By:

  
Rebecca Adams, CPA  
Director of Auditing

KEEP THIS PART FOR YOUR RECORDS

RETURN THIS PART WITH PAYMENT

TAXPAYER:

ACCOUNT #:

TYPE OF TAX: Business License  
TAX PERIOD: 2004-2008

MAIL TO: Tax Trust Account  
Attn: Sherrie Dale  
2317 3rd Avenue North  
Birmingham, AL 35203  
PHONE: (205)324-0088 ext 34251  
FAX: (205)423-4099

PAY THIS AMOUNT .....

**Final Assessment Appeal Rights**  
**Code of Alabama 1975, 40-2A-7(5)**

The Alabama Taxpayers' Bill of Rights and uniform Revenue Procedures Act guarantees you certain rights of appeal regarding your final assessment. If you intend to appeal your final assessment, you must do so within thirty days from the date of issuance. (If you mail your appeal through the U.S. mail, it will be considered as timely filed if it is postmarked within the thirty day time period, unless the 30th day falls on a weekend or U.S. holiday. In such cases, the next working day would apply).

You may elect to appeal your final assessment to the circuit court. This may be done in either Montgomery County, Alabama, or in the circuit court of the Alabama County in which you reside or have your principal place of business. The written appeal should contain your name, address, telephone number, type of tax, and tax period(s) being appealed.

If you choose to appeal to circuit court, you must file your written notice of appeal within thirty days of the final assessment date with the court clerk where you file your appeal and mail a copy of such appeal to the following address:

Tax Trust Account  
ATTN: Sherrie Dale  
2317 3rd Ave North  
Birmingham, AL 35203

Additionally, if you elect to appeal, you must either pay the assessment in full or post a supersedes bond with the court in double the amount of the assessment. However, if you have a total net worth of \$20,000 or less, you may qualify for a special exception, which provides for the filing of an appeal without either paying the assessment or posting a bond first (Section 40-2A-7(b)(5), Code of Alabama 1975). For more information on this exception, you should contact the court clerk in which you plan to make your appeal.

If you do not wish to appeal this final assessment, your payment for the total amount should be attached to the notice and forwarded to the address shown on the final assessment. A final assessment, which is not appealed, is as conclusive as a judgment of a circuit court. The above listed jurisdiction may proceed with collection by execution, garnishment, or levy as provided by Section 40-29-23, Code of Alabama 1975.



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CIRCUIT COURT OF  
JEFFERSON COUNTY, ALABAMA  
ANNE-MARIE ADAMS, CLERK

# **EXHIBIT F**



BILL THOMPSON  
CHIEF ADMINISTRATIVE LAW JUDGE

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION  
Montgomery, Alabama 36104

2 N. JACKSON ST., SUITE 301  
MONTGOMERY, ALABAMA 36104  
(334) 954-7195  
FAX # (334) 954-7199

Re: Administrative Law Division Appeal Statistics

Dear

The attached spreadsheet is a breakdown of appeals to the Alabama Department of Revenue's Administrative Law Division from 1995 until 2008. The first column of the spreadsheet shows the number of appeals docketed in each year.

The second column shows the number of Final Orders entered in each year affirming a final assessment or a denied refund, which would be considered a "win" for the Department. That occurred in 29% of the appeals:

The fourth column shows the number of Final Orders entered either voiding or reducing the amount of a final assessment; or granting a taxpayer a refund. That would be considered a "win" for the taxpayer, and occurred in 45% of the appeals.

The fifth column is obvious. The parties settled the case. That occurred in 3% of the appeals.

The final two columns show appeals that were dismissed either at a taxpayer's request or at the Department's request. These could involve appeals that were dismissed for lack of jurisdiction (usually untimely appeals), or simply because the taxpayer decided not to pursue the appeal. That occurred in 16% and 8% of the appeals, respectively.

I hope this has been helpful.

Sincerely,

Dana Raybon  
Executive Assistant to the  
Chief Administrative Law Judge

**ADMINISTRATIVE LAW DIVISION  
DISPOSITION OF APPEALS  
1995-2008**

Year	# of Appeals Docketed	Assessment Affirmed		Assessment Reduced or Voided		Parties Settled (3%)	Dismissed at Taxpayer Request (16%)		Dismissed at Department Request (8%)	
		Refund Denied (29%)		Refund Granted (45%)						
1995	387	135		139		32	48		25	
1996	405	130		113		16	60		19	
1997	390	132		87		15	51		18	
1998	444	134		130		17	64		18	
1999	515	114		135		17	59		23	
2000	711	136		156		17	68		29	
2001	951	160		344		70	66		41	
2002	823	83		255		14	75		46	
2003	1061	166		510		4	193		97	
2004	949	313		360		9	142		70	
2005	1227	309		537		4	207		106	
2006	1182	389		501		8	150		79	
2007	978	276		448		5	172		88	
2008	954	205		443		6	169		86	
<b>Total</b>		<b>2682</b>		<b>4158</b>		<b>234</b>	<b>1524</b>		<b>745</b>	