

By: Representative Cameron

To: Ways and Means

HOUSE BILL NO. 650

1 AN ACT TO AMEND SECTIONS 27-7-51 AND 27-7-53, MISSISSIPPI
2 CODE OF 1972, TO REVISE WHEN INTEREST BEGINS TO RUN ON A PAYMENT
3 OF ADDITIONAL INCOME TAX OWED BY A TAXPAYER WHEN THE STATE TAX
4 COMMISSION OR INTERNAL REVENUE SERVICE DETERMINES THAT A TAXPAYER
5 HAS MADE AN UNDERPAYMENT OF INCOME TAX; TO REVISE THE AMOUNT OF
6 INTEREST AND PENALTY THAT MAY BE ASSESSED ON SUCH ADDITIONAL TAX;
7 AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 SECTION 1. Section 27-7-51, Mississippi Code of 1972, is
10 amended as follows:

11 27-7-51. (1) If, upon examination of a return made under
12 the provisions of this article, it appears that the correct amount
13 of tax is greater or less than that shown in the return, the tax
14 shall be recomputed. Any overpayment of tax so determined shall
15 be credited or refunded to the taxpayer. If the correct amount of
16 tax is greater than that shown in the return of the taxpayer, the
17 commissioner shall make his assessment of additional tax due by
18 certified mail or by personal delivery of the assessment to the
19 taxpayer, which assessment shall constitute notice and demand for
20 payment. The taxpayer shall be given a period of thirty (30) days
21 after receipt of notice in which to pay the additional tax due,
22 * * * and if said sum is not paid within the period of thirty
23 (30) days, the commissioner shall proceed to collect same, with
24 penalty and interest, under the provisions of Sections 27-7-55 to
25 27-7-67, provided that within said period of thirty (30) days the
26 taxpayer may appeal as set out in Sections 27-7-71 and 27-7-73.

27 (2) In the case of an overpayment of tax, interest shall be
28 computed under the provisions of Section 27-7-315. In the case of

29 an underpayment of tax, interest at the rate of one-half of one
30 percent (1/2 of 1%) per month from the * * * date * * * the taxpayer
31 receives notice the additional tax is due shall be added or
32 assessed in addition to the additional tax due as hereinabove
33 provided in subsection (1).

34 (3) In case of failure to pay any additional taxes as
35 assessed under this section, unless it is shown that such failure
36 is due to reasonable cause and not due to willful neglect, there
37 shall be added to the additional amount assessed a penalty of
38 one-half of one percent (1/2 of 1%) of the amount of the
39 additional tax if the failure is for not more than one (1) month,
40 with an additional one-half of one percent (1/2 of 1%) for each
41 additional month or fraction thereof during which the failure
42 continues, not to exceed twenty-five percent (25%) in the
43 aggregate. However, in no case shall such penalty when added to
44 any interest assessed under this section exceed the aggregate
45 amount of six percent (6%) annually.

46 (4) Where the reported net income of a taxpayer is increased
47 by the Internal Revenue Service, a taxpayer who, without action by
48 the commissioner, amends a return filed under this article on the
49 basis of a change in taxable income made by the Internal Revenue
50 Service, and pays the additional tax due thereon within thirty
51 (30) days after agreeing to the federal change (and has received
52 statement of the federal changes to which agreement has been made
53 or payment thereof), shall add interest to the additional tax at
54 the rate of one-half of one percent (1/2 of 1%) per month from due
55 date of the amended return. If the additional tax, based on
56 changes in taxable income by the Internal Revenue Service, is
57 assessed by the commissioner under subsection (1) of this section,
58 in addition to the interest there may be added a penalty of
59 one-half of one percent (1/2 of 1%) of the additional tax due if
60 the failure is for not more than one (1) month, with an additional
61 one-half of one percent (1/2 of 1%) for each additional month or
62 fraction thereof during which the failure to pay continues, not to
63 exceed twenty-five percent (25%) in the aggregate, unless it is
64 shown that the failure is due to reasonable cause and not due to
65 willful neglect. However, in no case shall such penalty when

66 added to any interest assessed under this section exceed the
67 aggregate amount of six percent (6%) annually.

68 (5) In the case of a taxpayer who files a bond as provided
69 by Section 27-13-45 in lieu of payment of the additional tax found
70 to be due by the State Tax Commission, and such tax assessment or
71 a part thereof is upheld by the chancery court and/or the Supreme
72 Court, such assessment shall bear interest at the rate of one-half
73 of one percent ($\frac{1}{2}$ of 1%) per month from the * * * date the
74 taxpayer received notice the additional tax was due.

75 Nothing in this section shall be construed as authorizing a
76 refund of taxes for claims pursuant to the United States Supreme
77 Court decision of Davis v. Michigan Department of Treasury, 109
78 S.Ct. 1500 (1989). These taxes were not incorrectly and/or
79 erroneously collected as contemplated by this chapter.

80 In the event a court of final jurisdiction determines the
81 above provision to be void for any reason, it is hereby declared
82 the intent of the Legislature that affected taxpayers shall be
83 allowed a credit against future income tax liability as opposed to
84 a tax refund.

85 SECTION 2. Section 27-7-53, Mississippi Code of 1972, is
86 amended as follows:

87 27-7-53. (1) If a return is timely filed by the taxpayer
88 but the tax due is not paid, the commissioner shall make his
89 assessment of tax due by mail or by personal delivery of the
90 assessment to the taxpayer, which assessment shall constitute
91 notice and demand for payment. The taxpayer shall be given a
92 period of thirty (30) days from the date of the notice in which to
93 pay the tax due, * * * and if said sum is not paid within the
94 period of thirty (30) days, the commissioner shall proceed to
95 collect same, with penalty and interest, under the provisions of
96 Sections 27-7-55 to 27-7-67 of this article; provided that within
97 said period of thirty (30) days the taxpayer may appeal as set out
98 in Sections 27-7-71 and 27-7-73.

99 (2) If no return is made by a taxpayer required by this
100 chapter to make a return, the commissioner shall determine the
101 taxpayer's liability from the best information available, which
102 determination shall be prima facie correct for the purpose of this
103 article, and the commissioner shall forthwith make an assessment
104 of the tax so determined to be due by mail or by personal delivery
105 of the assessment to the taxpayer, which assessment shall
106 constitute notice and demand for payment. The taxpayer shall be
107 given a period of thirty (30) days from the date of the notice in
108 which to pay the tax due, * * * and if said sum is not paid within
109 the period of thirty (30) days, the commissioner shall proceed to
110 collect same, with penalty and interest, under the provisions of
111 Sections 27-7-55 to 27-7-67 of this article; provided that within
112 said period of thirty (30) days the taxpayer may appeal as set out
113 in Sections 27-7-71 and 27-7-73.

114 (3) Interest at the rate of one-half of one percent (½ of
115 1%) per month from the * * * date * * * the taxpayer receives
116 notice the tax is due shall be added or assessed in addition to
117 the tax due as hereinabove provided in subsections (1) and (2).

118 (4) In case of failure to file a return as required by this
119 chapter, unless it can be shown that the failure is due to
120 reasonable cause and not due to willful neglect, there shall be
121 added to the amount required to be shown as tax on the return a
122 penalty of one-half of one percent (½ of 1%) of the amount of the
123 tax if the failure is for not more than one (1) month, with an
124 additional one-half of one percent (½ of 1%) for each additional
125 month or fraction thereof during which the failure continues, not
126 to exceed twenty-five percent (25%) in the aggregate. However, in
127 no case shall such penalty when added to any interest or other
128 amount assessed under this section exceed the aggregate amount of
129 six percent (6%) annually.

130 (5) In case of failure to pay the amount shown as tax on any
131 return specified in subsections (1) and (2) of this section on or

132 before the date prescribed for payment of the tax, determined with
133 regard to any extension of time for payment, unless it is shown
134 that the failure is due to reasonable cause and not due to willful
135 neglect, there shall be added to the amount shown as tax on the
136 return one-half of one percent (1/2 of 1%) of the amount of the
137 tax if the failure is for not more than one (1) month, with an
138 additional one-half of one percent (1/2 of 1%) for each additional
139 month or fraction thereof during which the failure continues, not
140 to exceed twenty-five percent (25%) in the aggregate. However, in
141 no case shall such amount when added to any penalty or interest,
142 or both, assessed under this section exceed the aggregate amount
143 of six percent (6%) annually.

144 SECTION 3. Nothing in this act shall affect or defeat any
145 claim, assessment, appeal, suit, right or cause of action for
146 taxes due or accrued under the income tax laws before the date on
147 which this act becomes effective, whether such claims,
148 assessments, appeals, suits or actions have been begun before the
149 date on which this act becomes effective or are begun thereafter;
150 and the provisions of the income tax laws are expressly continued
151 in full force, effect and operation for the purpose of the
152 assessment, collection and enrollment of liens for any taxes due
153 or accrued and the execution of any warrant under such laws before
154 the date on which this act becomes effective, and for the
155 imposition of any penalties, forfeitures or claims for failure to
156 comply with such laws.

157 SECTION 4. This act shall take effect and be in force from
158 and after July 1, 1999.