

By: Representative Cameron

To: Ways and Means

HOUSE BILL NO. 651

1 AN ACT TO AMEND SECTION 27-7-49, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE CIRCUMSTANCES UNDER WHICH THE STATE TAX COMMISSION MAY
3 EXAMINE INCOME TAX RETURNS FOR A PERIOD OF MORE THAN THREE YEARS
4 FROM THE RETURN DUE DATE OR THE DATE A RETURN WAS FILED; TO AMEND
5 SECTION 27-7-313, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;
6 AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 27-7-49, Mississippi Code of 1972, is
9 amended as follows:

10 27-7-49. (1) Returns shall be examined by the Commissioner
11 or his duly authorized agents within three (3) years from the due
12 date or the date the return was filed, whichever is later, and no
13 determination of a tax overpayment or deficiency shall be made by
14 the Commissioner, and no suit shall be filed with respect to
15 income within the period covered by such return, after the
16 expiration of said three-year period, except as hereinafter
17 provided.

18 (2) When an examination of a return made under this article
19 has been commenced, and the taxpayer notified thereof, either by
20 certified mail or personal delivery by an agent of the
21 Commissioner, within the three-year examination period provided in
22 subsection (1) of this section, the determination of the correct
23 tax liability may be made by the Commissioner after the expiration
24 of said three-year examination period, provided that said
25 determination shall be made with reasonable promptness and
26 diligence.

27 * * *

28 (3) A taxpayer may apply to the Commissioner for revision of

29 any return filed under this article at any time within three (3)
30 years from the due date, or if an extension of time to file was
31 granted, three (3) years from the date the return was filed. If
32 the return is not filed by the time authorized by the extension,
33 then the three (3) years begin to run from the final day of the
34 extension period.

35 SECTION 2. Section 27-7-313, Mississippi Code of 1972, is
36 amended as follows:

37 27-7-313. In the case of any overpayment of any tax,
38 interest or penalty levied or provided for in Article 1 of this
39 chapter, or in this article, whether by reason of excessive
40 withholding, error on the part of the taxpayer, erroneous
41 assessment of tax, or otherwise, the excess shall be refunded to
42 the taxpayer.

43 When, upon examination of any return made under this article,
44 or under the provisions of Article 1 of this chapter, it appears
45 that an amount of income tax has been paid in excess of the amount
46 properly due, then the amount of the excess shall be credited
47 against any income tax then due from the taxpayer under any other
48 return required by this article, or Article 1 of this chapter.
49 Refunds or credits may be withheld or applied against any other
50 tax determined finally to be due if the taxpayer has failed to pay
51 any tax finally due as required by the provisions of the laws
52 administered by the commission. Any excess after such application
53 shall be certified to the State Auditor of Public Accounts by the
54 commissioner. The said Auditor is hereby authorized to make such
55 investigation and audit of the claim as he finds necessary. If he
56 finds that the commissioner is correct in his determination, the
57 Auditor may issue his warrant to the State Treasurer in favor of
58 the taxpayer for the amount of tax erroneously paid into the State
59 Treasury. No refund shall be granted under this article or under
60 the provisions of Article 1 of this chapter unless a claim for
61 same is made within three (3) years from the date the return is

62 due, or within three (3) years from the final day of an extension
63 period previously granted by the commissioner pursuant to the
64 provisions of Section 27-7-50; however, the restrictions imposed
65 by this section do not apply to those refund requests or claims
66 made in compliance with subsection (2) * * * of Section 27-7-49.

67 The State Treasurer shall withhold from all income taxes
68 collected each month an amount necessary to make refunds expected
69 to be approved by the State Auditor during the following month.
70 This amount shall be placed in a special fund, separate and apart
71 from the General Fund of the state, and used for the purpose of
72 making refunds under the Income Tax Laws of the state. All
73 refunds made under this article shall be made as quickly as
74 possible upon receipt of the proper proof, as required by the
75 State Auditor.

76 In order to obtain a refund, such employee shall attach to
77 his return a copy of the withholding statement required to be
78 furnished him by his employer as provided in Section 27-7-311. The
79 making of any refund shall not be conclusive of the tax due by any
80 individual, but shall be made subject to the future audit of his
81 return and the determination of his liability. Bond requirements
82 of Section 7-7-57 shall not apply to warrants for refund of income
83 tax.

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

89 In the event a court of final jurisdiction determines the
90 above provision to be void for any reason, it is hereby declared
91 the intent of the Legislature that affected taxpayers shall be
92 allowed a credit against future income tax liability as opposed to
93 a tax refund.

94 SECTION 3. Nothing in this act shall affect or defeat any

95 claim, assessment, appeal, suit, right or cause of action for
96 taxes due or accrued under the income tax laws before the date on
97 which this act becomes effective, whether such claims,
98 assessments, appeals, suits or actions have been begun before the
99 date on which this act becomes effective or are begun thereafter;
100 and the provisions of the income tax laws are expressly continued
101 in full force, effect and operation for the purpose of the
102 assessment, collection and enrollment of liens for any taxes due
103 or accrued and the execution of any warrant under such laws before
104 the date on which this act becomes effective, and for the
105 imposition of any penalties, forfeitures or claims for failure to
106 comply with such laws.

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