

By: Cameron

To: Ways and Means

HOUSE BILL NO. 136

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 (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.

44 (4) Where the reported net income of a taxpayer is increased  
45 by the Internal Revenue Service, a taxpayer who, without action by  
46 the commissioner, amends a return filed under this article on the  
47 basis of a change in taxable income made by the Internal Revenue  
48 Service, and pays the additional tax due thereon within thirty  
49 (30) days after agreeing to the federal change (and has received  
50 statement of the federal changes to which agreement has been made  
51 or payment thereof), shall add interest to the additional tax at  
52 the rate of one-half of one percent (2 of 1%) per month from due  
53 date of the amended return. If the additional tax, based on  
54 changes in taxable income by the Internal Revenue Service, is

55 assessed by the commissioner under subsection (1) of this section,  
56 in addition to the interest there may be added a penalty of  
57 one-half of one percent (1/2 of 1%) of the additional tax due if  
58 the failure is for not more than one (1) month, with an additional  
59 one-half of one percent (1/2 of 1%) for each additional month or  
60 fraction thereof during which the failure to pay continues, not to  
61 exceed twenty-five percent (25%) in the aggregate, unless it is  
62 shown that the failure is due to reasonable cause and not due to  
63 willful neglect.

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

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

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

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

83           27-7-53. (1) If a return is timely filed by the taxpayer  
84 but the tax due is not paid, the commissioner shall make his  
85 assessment of tax due by mail or by personal delivery of the  
86 assessment to the taxpayer, which assessment shall constitute  
87 notice and demand for payment. The taxpayer shall be given a  
88 period of thirty (30) days from the date of the notice in which to  
89 pay the tax due, \* \* \* and if said sum is not paid within the  
90 period of thirty (30) days, the commissioner shall proceed to  
91 collect same, with penalty and interest, under the provisions of  
92 Sections 27-7-55 to 27-7-67 of this article; provided that within  
93 said period of thirty (30) days the taxpayer may appeal as set out  
94 in Sections 27-7-71 and 27-7-73.

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

110           (3) Interest at the rate of one-half of one percent (2 of

111 1% per month from the \* \* \* date \* \* \* the taxpayer receives  
112 notice the tax is due shall be added or assessed in addition to  
113 the tax due as hereinabove provided in subsections (1) and (2).

114 (4) In case of failure to file a return as required by this  
115 chapter, unless it can be shown that the failure is due to  
116 reasonable cause and not due to willful neglect, there shall be  
117 added to the amount required to be shown as tax on the return a  
118 penalty of one-half of one percent (2 of 1%) of the amount of the  
119 tax if the failure is for not more than one (1) month, with an  
120 additional one-half of one percent (2 of 1%) for each additional  
121 month or fraction thereof during which the failure continues, not  
122 to exceed twenty-five percent (25%) in the aggregate. \* \* \*

123 (5) In case of failure to pay the amount shown as tax on any  
124 return specified in subsections (1) and (2) of this section on or  
125 before the date prescribed for payment of the tax, determined with  
126 regard to any extension of time for payment, unless it is shown  
127 that the failure is due to reasonable cause and not due to willful  
128 neglect, there shall be added to the amount shown as tax on the  
129 return one-half of one percent (1/2 of 1%) of the amount of the  
130 tax if the failure is for not more than one (1) month, with an  
131 additional one-half of one percent (1/2 of 1%) for each additional  
132 month or fraction thereof during which the failure continues, not  
133 to exceed twenty-five percent (25%) in the aggregate.

134 SECTION 3. Nothing in this act shall affect or defeat any  
135 claim, assessment, appeal, suit, right or cause of action for  
136 taxes due or accrued under the income tax laws before the date on  
137 which this act becomes effective, whether such claims,  
138 assessments, appeals, suits or actions have been begun before the

139 date on which this act becomes effective or are begun thereafter;  
140 and the provisions of the income tax laws are expressly continued  
141 in full force, effect and operation for the purpose of the  
142 assessment, collection and enrollment of liens for any taxes due  
143 or accrued and the execution of any warrant under such laws before  
144 the date on which this act becomes effective, and for the  
145 imposition of any penalties, forfeitures or claims for failure to  
146 comply with such laws.

147 SECTION 4. This act shall take effect and be in force from  
148 and after July 1, 2000.