

By: Representative Cameron

To: Ways and Means

HOUSE BILL NO. 276

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
31 taxpayer receives notice the additional tax is due shall be added
32 or 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 (1/2 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 (1/2 of 1%) per month from the * * * date the
70 taxpayer receives notice the additional tax is due until paid.

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 (1/2 of 1%) of the amount of
119 the tax if the failure is for not more than one (1) month, with an
120 additional one-half of one percent (1/2 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, 2001.

