MISSISSIPPI LEGISLATURE REGULAR SESSION 2001

By: Representative Simpson

To: Ways and Means

HOUSE BILL NO. 1295

AN ACT TO AMEND SECTION 27-7-313, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A TAXPAYER WHO HAS BEEN ISSUED AN INCOME TAX REFUND MAY NEGOTIATE THE REFUND, REGARDLESS OF ITS DATE OF EXPIRATION; TO LIMIT THE TIME WITHIN WHICH THIS PROVISION MAY APPLY TO THE CALENDAR YEAR 2001; TO AMEND SECTION 75-3-304, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 27-7-313, Mississippi Code of 1972, is amended as follows:

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

When, upon examination of any return made under this article, or under the provisions of Article 1 of this chapter, it appears that an amount of income tax has been paid in excess of the amount properly due, then the amount of the excess shall be credited against any income tax then due from the taxpayer under any other return required by this article, or Article 1 of this chapter. Refunds or credits may be withheld or applied against any other tax determined finally to be due if the taxpayer has failed to pay any tax finally due as required by the provisions of the laws administered by the commission. Any excess after such application shall be certified to the State Auditor of Public Accounts by the commissioner. The said Auditor is hereby authorized to make such investigation and audit of the claim as he finds necessary. If he finds that the commissioner is correct in his determination, the Auditor may issue his warrant to the State Treasurer in favor of the taxpayer for the amount of tax erroneously paid into the State Treasury. No refund shall be granted under this article or under the provisions of Article 1 of this chapter unless a claim for same is made within three (3) years from the date the return is due, or within three (3) years from the final day of an extension period previously granted by the commissioner pursuant to the provisions of Section 27-7-50; however, the restrictions imposed by this section do not apply to those refund requests or claims made in compliance with subsections (2) and (3) of Section 27-7-49. <u>From January 1, 2001, through December 31, 2001, a taxpayer who has been issued an income tax refund in the form of a warrant from the state may negotiate the warrant, regardless of its date of issuance or expiration; provided that the authority granted in this provision will be repealed on January 1, 2002.</u>

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

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

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

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

SECTION 2. Section 75-3-304, Mississippi Code of 1972, is amended as follows:

[Until January 1, 2001, this section will read as follows:]

75-3-304. (a) An instrument payable on demand becomes overdue at the earliest of the following times:

(1) On the day after the day demand for payment is duly made;

(2) If the instrument is a check, ninety (90) days after its date; or

(3) If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

(1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

(d) With respect to a state income tax refund issued to a taxpayer in the form of a warrant from the state, that instrument will not be considered as overdue from January 1, 2001, through December 31, 2001, regardless of the warrant's date of issuance or expiration.

[From and after January 1, 2002, this section will read as follows:]

75-3-304. (a) An instrument payable on demand becomes overdue at the earliest of the following times:

(1) On the day after the day demand for payment is duly made;

(2) If the instrument is a check, ninety (90) days after its date; or

(3) If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

(1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an

installment, and the instrument remains overdue until the default is cured.

(2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

SECTION 3. This act shall take effect and be in force from and after January 1, 2001.

ST: Income Tax; certain refunds may be negotiated regardless of date of expiration.