HOUSE BILL NO. 351

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

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

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

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

(2) In the case of an overpayment of tax, interest shall be computed under the provisions of Section 27-7-315. In the case of an underpayment of tax, interest at the rate of one-half of one
percent (1/2 of 1%) per month from the *** date *** the taxpayer receives notice the additional tax is due shall be added or assessed in addition to the additional tax due as hereinabove provided in subsection (1).

(3) In case of failure to pay any additional taxes as assessed under this section, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the additional amount assessed a penalty of one-half of one percent (1/2 of 1%) of the amount of the additional tax if the failure is for not more than one (1) month, with an additional one-half of one percent (1/2 of 1%) for each additional month or fraction thereof during which the failure continues, not to exceed twenty-five percent (25%) in the aggregate.

(4) Where the reported net income of a taxpayer is increased by the Internal Revenue Service, a taxpayer who, without action by the commissioner, amends a return filed under this article on the basis of a change in taxable income made by the Internal Revenue Service, and pays the additional tax due thereon within thirty (30) days after agreeing to the federal change (and has received statement of the federal changes to which agreement has been made or payment thereof), shall add interest to the additional tax at the rate of one-half of one percent (1/2 of 1%) per month from due date of the amended return. If the additional tax, based on changes in taxable income by the Internal Revenue Service, is assessed by the commissioner under subsection (1) of this section, in addition to the interest there may be added a penalty of one-half of one percent (1/2 of 1%) of the additional tax due if the failure is for not more than one (1) month, with an additional one-half of one percent (1/2 of 1%) for each additional month or fraction thereof during which the failure to pay continues, not to exceed twenty-five percent (25%) in the aggregate, unless it is
shown that the failure is due to reasonable cause and not due to willful neglect.

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

Nothing in this section shall be construed as authorizing a refund of taxes for claims 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 27-7-53, Mississippi Code of 1972, is amended as follows:

27-7-53. (1) If a return is timely filed by the taxpayer but the tax due is not paid, the commissioner shall make his assessment of tax due by mail or by personal delivery of the assessment to the taxpayer, which assessment shall constitute notice and demand for payment. The taxpayer shall be given a period of thirty (30) days from the date of the notice in which to pay the tax due, * * * and if said sum is not paid within the period of thirty (30) days, the commissioner shall proceed to collect same, with penalty and interest, under the provisions of Sections 27-7-55 to 27-7-67 of this article; provided that within said period of thirty (30) days the taxpayer may appeal as set out in Sections 27-7-71 and 27-7-73.
(2) If no return is made by a taxpayer required by this chapter to make a return, the commissioner shall determine the taxpayer's liability from the best information available, which determination shall be prima facie correct for the purpose of this article, and the commissioner shall forthwith make an assessment of the tax so determined to be due by mail or by personal delivery of the assessment to the taxpayer, which assessment shall constitute notice and demand for payment. The taxpayer shall be given a period of thirty (30) days from the date of the notice in which to pay the tax due, and if said sum is not paid within the period of thirty (30) days, the commissioner shall proceed to collect same, with penalty and interest, under the provisions of Sections 27-7-55 to 27-7-67 of this article; provided that within said period of thirty (30) days the taxpayer may appeal as set out in Sections 27-7-71 and 27-7-73.

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

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

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

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

SECTION 4. This act shall take effect and be in force from
and after July 1, 2002.