

By: Representative Cameron

To: Ways and Means

HOUSE BILL NO. 654

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
22 due, * * * 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
25 through 27-7-67, provided that within said period of thirty (30)
26 days the taxpayer may appeal as set out in Sections 27-7-71 and
27 27-7-73.

28 (2) In the case of an overpayment of tax, interest shall be
29 computed under the provisions of Section 27-7-315. In the case of



30 an underpayment of tax, interest at the rate of one-half of one
31 percent (1/2 of 1%) per month from the * * * date * * * the
32 taxpayer receives notice the additional tax is due may be added or
33 assessed in addition to the additional tax due as hereinabove
34 provided in subsection (1).

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

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



63 shown that the failure is due to reasonable cause and not due to
64 willful neglect.

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

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

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

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

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



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

111 (3) Interest at the rate of one-half of one percent (1/2 of
112 1%) per month from the * * * date * * * the taxpayer receives
113 notice the tax is due may be added or assessed in addition to the
114 tax due as hereinabove provided in subsections (1) and (2).

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

124 (5) In case of failure to pay the amount shown as tax on any
125 return specified in subsections (1) and (2) of this section on or
126 before the date prescribed for payment of the tax, determined with
127 regard to any extension of time for payment, unless it is shown
128 that the failure is due to reasonable cause and not due to willful



129 neglect, there may be added to the amount shown as tax on the
130 return one-half of one percent (1/2 of 1%) of the amount of the
131 tax if the failure is for not more than one (1) month, with an
132 additional one-half of one percent (1/2 of 1%) for each additional
133 month or fraction thereof during which the failure continues, not
134 to exceed twenty-five percent (25%) in the aggregate.

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

148 **SECTION 4.** This act shall take effect and be in force from
149 and after July 1, 2003.

