

By: Representatives Fleming, Clarke

To: Ways and Means

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 193

1 AN ACT TO AMEND SECTION 27-7-53, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT A TAXPAYER FILING AN INDIVIDUAL INCOME TAX RETURN WHO
3 OWES ADDITIONAL INCOME TAX IN AN AMOUNT IN EXCESS OF \$300.00 BUT
4 NOT IN EXCESS OF \$3,000.00, MAY REQUEST THAT THE CHAIRMAN OF THE
5 STATE TAX COMMISSION ALLOW THE TAXPAYER TO PAY THE ADDITIONAL TAX
6 THROUGH AN INSTALLMENT AGREEMENT; TO PROVIDE THAT THE CHAIRMAN OF
7 THE STATE TAX COMMISSION MAY ALLOW SUCH A TAXPAYER TO PAY THE
8 ADDITIONAL INCOME TAX THROUGH AN INSTALLMENT AGREEMENT IF THE
9 CHAIRMAN OF THE STATE TAX COMMISSION DETERMINES THE TAXPAYER IS
10 FINANCIALLY UNABLE TO PAY THE ADDITIONAL TAX AND CERTAIN OTHER
11 CONDITIONS ARE SATISFIED; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 27-7-53, Mississippi Code of 1972, is
14 amended as follows:

15 27-7-53. (1) (a) Except as otherwise provided in this
16 section, if a return is timely filed by the taxpayer but the tax
17 due is not paid, the commissioner shall make his assessment of tax
18 due by 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 from the date of the notice in which to pay the tax due, including
22 penalty and interest as hereinafter provided, and if said sum is
23 not paid within the period of thirty (30) days, the commissioner
24 shall proceed to collect same under the provisions of Sections
25 27-7-55 through 27-7-67 of this article; provided that within said
26 period of thirty (30) days the taxpayer may appeal as set out in
27 Sections 27-7-71 and 27-7-73.

28 (b) (i) If an individual return is filed by the
29 taxpayer and the amount of tax liability (determined without
30 regard to interest, penalties, additions to the tax and additional
31 amounts) of the taxpayer exceeds Three Hundred Dollars (\$300.00)

32 but does not exceed Three Thousand Dollars (\$3,000.00), the
33 taxpayer may request to pay the tax liability through an
34 installment agreement. The taxpayer must file such a request with
35 the return and must provide all information required by the
36 commissioner. If the commissioner determines a taxpayer is
37 financially unable to pay the tax liability, the commissioner may
38 enter into an agreement to accept payment of the tax liability in
39 installments if:

40 1. The taxpayer (and the taxpayer's spouse if
41 the tax liability relates to a joint return), during any of the
42 preceding five (5) years, has not: a. failed to file any return
43 required by this chapter, b. failed to pay any tax required by
44 this chapter or c. entered into an installment agreement under
45 this paragraph (b);

46 2. The agreement requires full payment of the
47 tax liability in equal installments within twelve (12) months from
48 the date the return was filed; and

49 3. The taxpayer agrees to comply with the
50 terms of the agreement.

51 (ii) Payments made through an installment
52 agreement shall be subject to the interest provisions of
53 subsection (3) of this section.

54 (iii) The commissioner may terminate an
55 installment agreement entered into under this paragraph (b) if he
56 determines the taxpayer provided inaccurate or incomplete
57 information before the agreement was entered into or he believes
58 the collection of the tax to which the agreement relates is in
59 jeopardy.

60 (iv) The commissioner may modify or terminate an
61 installment agreement entered into under this paragraph (b) if the
62 taxpayer fails to:

63 1. Pay any installment due under the
64 agreement;

65 2. Pay any other tax liability due under this
66 chapter when the liability is due; or

67 3. Provide a statement of financial condition
68 required by the commissioner.

69 Nothing in this paragraph (b) shall limit or otherwise affect any
70 method used by the State Tax Commission before the effective date
71 of House Bill No. 193, 2004 Regular Session, with regard to
72 allowing a taxpayer to pay a tax liability of any amount in
73 installments, and the State Tax Commission may continue to use any
74 such method as well as any other method determined appropriate by
75 the commission after the effective date of House Bill No. 193,
76 2004 Regular Session.

77 (2) If no return is made by a taxpayer required by this
78 chapter to make a return, the commissioner shall determine the
79 taxpayer's liability from the best information available, which
80 determination shall be prima facie correct for the purpose of this
81 article, and the commissioner shall forthwith make an assessment
82 of the tax so determined to be due by mail or by personal delivery
83 of the assessment to the taxpayer, which assessment shall
84 constitute notice and demand for payment. The taxpayer shall be
85 given a period of thirty (30) days from the date of the notice in
86 which to pay the tax due, including penalty and interest as
87 hereinafter provided, and if said sum is not paid within the
88 period of thirty (30) days, the commissioner shall proceed to
89 collect same under the provisions of Sections 27-7-55 through
90 27-7-67 of this article; provided that within said period of
91 thirty (30) days the taxpayer may appeal as set out in Sections
92 27-7-71 and 27-7-73.

93 (3) Interest at the rate of one percent (1%) per month from
94 the due date of the return may be added or assessed in addition to
95 the tax due as hereinabove provided in subsections (1) and (2).

96 (4) In case of failure to file a return as required by this
97 chapter, unless it can be shown that the failure is due to

98 reasonable cause and not due to willful neglect, there may be
99 added to the amount required to be shown as tax on the return a
100 penalty of five percent (5%) of the amount of the tax if the
101 failure is for not more than one (1) month, with an additional
102 five percent (5%) for each additional month or fraction thereof
103 during which the failure continues, not to exceed twenty-five
104 percent (25%) in the aggregate. Such failure to file a return
105 penalty shall not be less than One Hundred Dollars (\$100.00).

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

118 **SECTION 2.** This act shall take effect and be in force from
119 and after January 1, 2005.