

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2786

1 AN ACT TO AUTHORIZE THE STATE TAX COMMISSION TO OFFSET STATE
 2 INCOME TAX REFUNDS TO TAXPAYERS AGAINST THE TAXPAYER'S PAST DUE,
 3 LEGALLY ENFORCEABLE PAST DUE FEDERAL INCOME TAX PAYMENTS AND PAY
 4 THE AMOUNT OFFSET TO THE FEDERAL GOVERNMENT; TO AUTHORIZE THE
 5 STATE TAX COMMISSION TO RECEIVE FROM THE FEDERAL GOVERNMENT
 6 AMOUNTS COLLECTED FROM PERSONS OWING PAST DUE, LEGALLY ENFORCEABLE
 7 INCOME TAX PAYMENTS TO THE STATE AND APPLY THE AMOUNT RECEIVED TO
 8 THE AMOUNT THE PERSON OWES; TO AMEND SECTION 27-7-83, MISSISSIPPI
 9 CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** As use in this act:

12 (a) "Debt" means a past due, legally enforceable state
13 or federal income tax obligation, unless otherwise indicated.

14 (b) "Debtor" means a person who owes a state or federal
15 income tax obligation.

16 (c) "Past due, legally enforceable obligation" means a
17 debt resulting from:

18 (i) A judgment rendered by a court of competent
19 jurisdiction which has determined an amount of income tax to be
20 due;

21 (ii) A determination after an administrative
22 hearing which has determined an amount of income tax to be due and
23 which is no longer subject to judicial review; or

24 (iii) An income tax assessment, including
25 self-assessments, which has become final in accordance with law,
26 but which has not been collected.

27 (d) "State" means the State of Mississippi acting
28 through the State Tax Commission.

29 (e) "Federal government" means the United States
30 Department of the Treasury or any agency under its administration.

31 (f) "Tax refund offset" means withholding or reducing a
32 tax refund overpayment by an amount necessary to satisfy a debt
33 owed by the payee.

34 (g) "Tax refund payment" means any overpayment of taxes
35 to be refunded to the person making the overpayment.

36 **SECTION 2.** (1) The federal government may submit
37 information on any past due, legally enforceable obligation to the
38 State Tax Commission for collection through a tax refund offset.
39 The state may submit information on any past due, legally
40 enforceable obligation to the federal government for collection
41 through a tax refund offset.

42 (2) Upon receiving notice from the federal government that a
43 named person owes a past due, legally enforceable obligation, the
44 State Tax Commission shall:

45 (a) Reduce the amount of any tax refund payment payable
46 to the named person by the amount of the past due, legally
47 enforceable obligation owed the federal government and, if the tax
48 refund exceeds the obligation, remit the excess to the person;

49 (b) Pay the amount by which the refund payment is
50 reduced under paragraph (a) of this subsection to the federal
51 government and notify the federal government of the person's name,
52 taxpayer identification number, address and the amount collected;
53 and

54 (c) Notify the named person that the tax refund payment
55 has been reduced by an amount necessary to satisfy a past due,
56 legally enforceable obligation.

57 (3) Upon receiving from the federal government the amount
58 collected from a person who owes the state a past due, legally
59 enforceable obligation, the State Tax Commission shall apply the
60 amount to the person's state debt and reduce the person's
61 obligation by the amount collected.

62 **SECTION 3.** Section 27-7-83, Mississippi Code of 1972, is
63 amended as follows:

64 27-7-83. (1) Returns and return information filed or
65 furnished under the provisions of this chapter shall be
66 confidential, and except in accordance with proper judicial order,
67 or as otherwise authorized by this section, it shall be unlawful
68 for members of the State Tax Commission or members of the
69 Mississippi Department of Information Technology Services, any
70 deputy, agent, clerk or other officer or employee thereof, or any
71 former employee thereof, to divulge or make known in any manner
72 the amount of income or any particulars set forth or disclosed in
73 any report or return required. The provisions of this section
74 shall apply fully to any federal return, a copy of any portion of
75 a federal return, or any information reflected on a federal return
76 which is attached to or made a part of the state tax return.
77 Likewise, the provisions of this section shall apply to any
78 federal return or portion thereof, or to any federal return
79 information data which is acquired from the Internal Revenue
80 Service for state tax administration purposes pursuant to the
81 Federal-State Exchange Program cited at Section 6103, Federal
82 Internal Revenue Code. The term "proper judicial order" as used
83 in this section shall not include subpoenas or subpoenas duces
84 tecum, but shall include only those orders entered by a court of
85 record in this state after furnishing notice and a hearing to the
86 taxpayer and the State Tax Commission. The court shall not
87 authorize the furnishing of such information unless it is
88 satisfied that the information is needed to pursue pending
89 litigation wherein the return itself is in issue, or the judge is
90 satisfied that the need for furnishing the information outweighs
91 the rights of the taxpayer to have such information secreted.

92 (2) Returns and return information with respect to taxes
93 imposed by this chapter shall be open to inspection by or
94 disclosure to the Commissioner of the Internal Revenue Service of
95 the United States, or the proper officer of any state imposing an
96 income tax similar to that imposed by this chapter, or the

97 authorized representatives of such agencies. Such inspection
98 shall be permitted, or such disclosure made, only upon written
99 request by the head of such agencies, or the district director in
100 the case of the Internal Revenue Service, and only to the
101 representatives of such agencies designated in a written statement
102 to the commissioner as the individuals who are to inspect or to
103 receive the return or return information on behalf of such agency.
104 The commissioner is authorized to enter into agreements with the
105 Internal Revenue Service and with other states for the exchange of
106 returns and return information data, or the disclosure of returns
107 or return information data to such agencies, only to the extent
108 that the statutes of the United States or of such other state, as
109 the case may be, grant substantially similar privileges to the
110 proper officer of this state charged with the administration of
111 the tax laws of this state.

112 (3) (a) The return of a person shall, upon written request,
113 be open to inspection by or disclosure to:

114 (i) In the case of the return of an individual,
115 that individual;

116 (ii) In the case of an income tax return filed
117 jointly, either of the individuals with respect to whom the return
118 is filed;

119 (iii) In the case of the return of a partnership,
120 any person who was a member of such partnership during any part of
121 the period covered by the return;

122 (iv) In the case of the return of a corporation or
123 a subsidiary thereof, any person designated by resolution of its
124 board of directors or other similar governing body, or any officer
125 or employee of such corporation upon written request signed by any
126 principal officer and attested to by the secretary or other
127 officer;

128 (v) In the case of the return of an estate, the
129 administrator, executor or trustee of such estate, and any heir at

130 law, next of kin or beneficiary under the will, of the decedent,
131 but only to the extent that such latter persons have a material
132 interest which will be affected by information contained therein;

133 (vi) In the case of the return of a trust, the
134 trustee or trustees, jointly or separately, and any beneficiary of
135 such trust, but only to the extent that such beneficiary has a
136 material interest which will be affected by information contained
137 therein;

138 (vii) In the case of the return of an individual
139 or a return filed jointly, any claimant agency seeking to collect
140 a debt through the set-off procedure established in Sections
141 27-7-701 through 27-7-713 and Sections 27-7-501 through 27-7-519,
142 from an individual with respect to whom the return is filed.

143 (b) If an individual described in paragraph (a) is
144 legally incompetent, the applicable return shall, upon written
145 request, be open to inspection by or disclosure to the committee,
146 trustee or guardian of his estate.

147 (c) If substantially all of the property of the person
148 with respect to whom the return is filed is in the hands of a
149 trustee in bankruptcy or receiver, such return or returns for
150 prior years of such person shall, upon written request, be open to
151 inspection by or disclosure to such trustee or receiver, but only
152 if the commissioner finds that such receiver or trustee, in his
153 fiduciary capacity, has a material interest which will be affected
154 by information contained therein.

155 (d) Any return to which this section applies shall,
156 upon written request, also be open to inspection by or disclosure
157 to the attorney-in-fact duly authorized in writing by any of the
158 persons described in paragraph (a) of this subsection to inspect
159 the return or receive the information on his behalf, subject to
160 the conditions provided in paragraph (a).

161 (e) Return information with respect to any taxpayer may
162 be open to inspection by or disclosure to any person authorized by

163 this subsection to inspect any return of such taxpayer if the
164 commissioner determines that such disclosure would not seriously
165 impair state tax administration.

166 (4) The State Auditor and the employees of his office shall
167 have the right to examine only such tax returns as are necessary
168 for auditing the State Tax Commission, and the same prohibitions
169 against disclosure which apply to the State Tax Commission shall
170 apply to the State Auditor and his employees or former employees.

171 (5) Nothing herein shall be construed to prohibit the
172 publication of statistics, so classified as to prevent the
173 identification of particular reports or returns and the items
174 thereof, or the inspection by the Attorney General, or any other
175 attorney representing the state, of the report or return of any
176 taxpayer who shall bring action to set aside the tax thereon, or
177 against whom any action or proceeding has been instituted to
178 recover any tax or penalty imposed.

179 (6) Nothing in this section shall prohibit the chairman of
180 the commission from making available information necessary to
181 recover taxes owing the state pursuant to the authority granted in
182 Section 27-75-16, Mississippi Code of 1972.

183 (7) Reports and returns required under the provisions of
184 this chapter shall be preserved in accordance with approved
185 records control schedules. No records, however, may be destroyed
186 without the approval of the Director of the Department of Archives
187 and History.

188 (8) The commission is authorized to disclose to the Child
189 Support Unit of the Department of Human Services the name,
190 address, social security number, amount of income, source of
191 income and assets for individuals who are delinquent in the
192 payment of any child support as defined in Section 93-11-101,
193 Mississippi Code of 1972.

194 (9) Nothing in this section shall prohibit the commission
195 from exchanging information with the federal government that is

196 necessary to offset income tax refund payment on debts owed to
197 this state of the United States.

198 **SECTION 4.** This act shall take effect and be in force from
199 and after its passage.