

By: Senator(s) Michel

To: Finance

SENATE BILL NO. 2868

1 AN ACT TO AMEND SECTION 27-7-313, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE INCOME TAX REFUNDS TO A TAXPAYER AFTER THE THREE-YEAR
3 TIME LIMIT IF THE CHAIRMAN OF THE STATE TAX COMMISSION FINDS THAT
4 THE FAILURE OF THE TAXPAYER TO TIMELY REQUEST THE REFUND IS DUE TO
5 CIRCUMSTANCES BEYOND THE CONTROL OF THE TAXPAYER; AND FOR RELATED
6 PURPOSES.

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

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

10 27-7-313. (1) In the case of any overpayment of any tax,
11 interest or penalty levied or provided for in Article 1 of this
12 chapter, or in this article, whether by reason of excessive
13 withholding, error on the part of the taxpayer, erroneous
14 assessment of tax, or otherwise, the excess shall be refunded to
15 the taxpayer.

16 (2) When, upon examination of any return made under this
17 article, or under the provisions of Article 1 of this chapter, it
18 appears that an amount of income tax has been paid in excess of
19 the amount properly due, then the amount of the excess shall be
20 credited against any income tax then due from the taxpayer under
21 any other return required by this article, or Article 1 of this
22 chapter. Refunds or credits may be withheld or applied against
23 any other tax determined finally to be due if the taxpayer has
24 failed to pay any tax finally due as required by the provisions of
25 the laws administered by the commission. Any excess after such
26 application shall be certified to the State Auditor of Public
27 Accounts by the commissioner. The * * * auditor is hereby
28 authorized to make such investigation and audit of the claim as he
29 finds necessary. If he finds that the commissioner is correct in

30 his determination, the auditor may issue his warrant to the State
31 Treasurer in favor of the taxpayer for the amount of tax
32 erroneously paid into the State Treasury.

33 (3) No refund shall be granted under this article or under
34 the provisions of Article 1 of this chapter unless a claim for a
35 refund is made within three (3) years from the date the return is
36 due, or within three (3) years from the final day of an extension
37 period previously granted by the commissioner pursuant to the
38 provisions of Section 27-7-50; however, the restrictions imposed
39 by this subsection do not apply to:

40 (a) Those refund requests or claims made in compliance
41 with subsections (2) and (3) of Section 27-7-49; or

42 (b) Refund requests that were not timely made by
43 taxpayers due to circumstances found by the commissioner to be
44 beyond the control of the taxpayer.

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

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

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

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

73 **SECTION 2.** This act shall take effect and be in force from
74 and after its passage.