

By: Representative Watson

To: Ways and Means

HOUSE BILL NO. 1195  
(As Passed the House)

1 AN ACT TO AMEND SECTIONS 27-7-51 AND 27-7-53, MISSISSIPPI  
2 CODE OF 1972, TO CLARIFY THAT THE ASSESSMENT OF A PENALTY FOR  
3 FAILURE TO PAY INCOME TAX OR FILE AN INCOME TAX RETURN IS  
4 PERMISSIVE; TO PROVIDE THAT A TAXPAYER FILING AN INDIVIDUAL INCOME  
5 TAX RETURN WHO OWES ADDITIONAL INCOME TAX IN AN AMOUNT IN EXCESS  
6 OF \$75.00 BUT NOT IN EXCESS OF \$3,000.00, MAY REQUEST THAT THE  
7 CHAIRMAN OF THE STATE TAX COMMISSION ALLOW THE TAXPAYER TO PAY THE  
8 ADDITIONAL TAX THROUGH AN INSTALLMENT AGREEMENT; TO PROVIDE THAT  
9 THE CHAIRMAN OF THE STATE TAX COMMISSION MAY ALLOW SUCH A TAXPAYER  
10 TO PAY THE ADDITIONAL INCOME TAX THROUGH AN INSTALLMENT AGREEMENT  
11 IF THE CHAIRMAN OF THE STATE TAX COMMISSION DETERMINES THE  
12 TAXPAYER IS FINANCIALLY UNABLE TO PAY THE ADDITIONAL TAX AND  
13 CERTAIN OTHER CONDITIONS ARE SATISFIED; AND FOR RELATED PURPOSES.

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

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

17 27-7-51. (1) If, upon examination of a return made under  
18 the provisions of this article, it appears that the correct amount  
19 of tax is greater or less than that shown in the return, the tax  
20 shall be recomputed. Any overpayment of tax so determined shall  
21 be credited or refunded to the taxpayer. If the correct amount of  
22 tax is greater than that shown in the return of the taxpayer, the  
23 commissioner shall make his assessment of additional tax due by  
24 certified mail or by personal delivery of the assessment to the  
25 taxpayer, which assessment shall constitute notice and demand for  
26 payment. The taxpayer shall be given a period of thirty (30) days  
27 after receipt of notice in which to pay the additional tax due,  
28 including penalty and interest as hereinafter provided, and if  
29 said sum is not paid within the period of thirty (30) days, the  
30 commissioner shall proceed to collect same under the provisions of  
31 Sections 27-7-55 through 27-7-67, provided that within said period

32 of thirty (30) days the taxpayer may appeal as set out in Sections  
33 27-7-71 and 27-7-73.

34 (2) In the case of an overpayment of tax, interest shall be  
35 computed under the provisions of Section 27-7-315. In the case of  
36 an underpayment of tax, interest at the rate of one percent (1%)  
37 per month from the due date of the return may be added or assessed  
38 in addition to the additional tax due as hereinabove provided in  
39 subsection (1).

40 (3) In case of failure to pay any additional taxes as  
41 assessed under this section, \* \* \* there may be added to the  
42 additional amount assessed a penalty of one-half of one percent  
43 (1/2 of 1%) of the amount of the additional tax if the failure is  
44 for not more than one (1) month, with an additional one-half of  
45 one percent (1/2 of 1%) for each additional month or fraction  
46 thereof during which the failure continues, not to exceed  
47 twenty-five percent (25%) in the aggregate.

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

65 twenty-five percent (25%) in the aggregate, unless it is shown  
66 that the failure is due to reasonable cause and not due to willful  
67 neglect.

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

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

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

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

86 27-7-53. (1) (a) Except as otherwise provided in this  
87 section, if a return is timely filed by the taxpayer but the tax  
88 due is not paid, the commissioner shall make his assessment of tax  
89 due by mail or by personal delivery of the assessment to the  
90 taxpayer, which assessment shall constitute notice and demand for  
91 payment. The taxpayer shall be given a period of thirty (30) days  
92 from the date of the notice in which to pay the tax due, including  
93 penalty and interest as hereinafter provided, and if said sum is  
94 not paid within the period of thirty (30) days, the commissioner  
95 shall proceed to collect same under the provisions of Sections  
96 27-7-55 through 27-7-67 of this article; provided that within said

97 period of thirty (30) days the taxpayer may appeal as set out in  
98 Sections 27-7-71 and 27-7-73.

99 (b) (i) If an individual return is timely filed by the  
100 taxpayer and the amount of tax liability (determined without  
101 regard to interest, penalties, additions to the tax and additional  
102 amounts) of the taxpayer exceeds Seventy-five Dollars (\$75.00) but  
103 does not exceed Three Thousand Dollars (\$3,000.00), the taxpayer  
104 may request to pay the tax liability through an installment  
105 agreement. The taxpayer must file such a request with the return  
106 and must provide all information required by the commissioner. If  
107 the commissioner determines a taxpayer is financially unable to  
108 pay the tax liability, the commissioner may enter into an  
109 agreement to accept payment of the tax liability in installments  
110 if:

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

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

120 3. The taxpayer agrees to comply with the  
121 terms of the agreement.

122 (ii) Payments made through an installment  
123 agreement shall be subject to the interest provisions of  
124 subsection (3) of this section.

125 (iii) The commissioner may terminate an  
126 installment agreement entered into under this paragraph (b) if he  
127 determines the taxpayer provided inaccurate or incomplete  
128 information before the agreement was entered into or he believes

129 the collection of the tax to which the agreement relates is in  
130 jeopardy.

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

134 1. Pay any installment due under the  
135 agreement;

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

138 3. Provide a statement of financial condition  
139 required by the commissioner.

140 (2) If no return is made by a taxpayer required by this  
141 chapter to make a return, the commissioner shall determine the  
142 taxpayer's liability from the best information available, which  
143 determination shall be prima facie correct for the purpose of this  
144 article, and the commissioner shall forthwith make an assessment  
145 of the tax so determined to be due by mail or by personal delivery  
146 of the assessment to the taxpayer, which assessment shall  
147 constitute notice and demand for payment. The taxpayer shall be  
148 given a period of thirty (30) days from the date of the notice in  
149 which to pay the tax due, including penalty and interest as  
150 hereinafter provided, and if said sum is not paid within the  
151 period of thirty (30) days, the commissioner shall proceed to  
152 collect same under the provisions of Sections 27-7-55 through  
153 27-7-67 of this article; provided that within said period of  
154 thirty (30) days the taxpayer may appeal as set out in Sections  
155 27-7-71 and 27-7-73.

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

159 (4) In case of failure to file a return as required by this  
160 chapter, \* \* \* there may be added to the amount required to be  
161 shown as tax on the return a penalty of five percent (5%) of the

162 amount of the tax if the failure is for not more than one (1)  
163 month, with an additional five percent (5%) for each additional  
164 month or fraction thereof during which the failure continues, not  
165 to exceed twenty-five percent (25%) in the aggregate. Such  
166 failure to file a return penalty shall not be less than One  
167 Hundred Dollars (\$100.00).

168 (5) In case of failure to pay the amount shown as tax on any  
169 return specified in subsections (1) and (2) of this section on or  
170 before the date prescribed for payment of the tax, determined with  
171 regard to any extension of time for payment or installment  
172 agreement, or both, \* \* \* there may be added to the amount shown  
173 as tax on the return one-half of one percent (1/2 of 1%) of the  
174 amount of the tax if the failure is for not more than one (1)  
175 month, with an additional one-half of one percent (1/2 of 1%) for  
176 each additional month or fraction thereof during which the failure  
177 continues, not to exceed twenty-five percent (25%) in the  
178 aggregate.

179 **SECTION 3.** This act shall take effect and be in force from  
180 and after July 1, 2005.