

By: Representatives Smith (39th), Scott

To: Ways and Means

HOUSE BILL NO. 892
(As Sent to Governor)

1 AN ACT TO AMEND SECTIONS 27-7-49, 27-13-49 AND 27-65-42,
 2 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT EXAMINATION OF A
 3 TAXPAYER'S INCOME, FRANCHISE AND SALES TAX RETURNS SHALL BE MADE
 4 WITHIN THREE YEARS OF THE DUE DATE OR THE DATE THE RETURN WAS
 5 FILED, WHICHEVER IS LATER, UNLESS THE TAXPAYER IS PROPERLY
 6 NOTIFIED OF THE EXAMINATION WITHIN THE THREE-YEAR EXAMINATION
 7 PERIOD IN WHICH CASE THE EXAMINATION MUST BE COMPLETED WITHIN ONE
 8 YEAR AFTER THE EXPIRATION OF THE THREE-YEAR EXAMINATION PERIOD; TO
 9 PROVIDE THAT THE THREE-YEAR AND ONE-YEAR LIMITATIONS SHALL NOT
 10 APPLY IN CERTAIN CASES; TO AMEND SECTIONS 27-7-313 AND 27-73-5,
 11 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND SECTION
 12 27-65-37, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF IN AN AUDIT
 13 OF THE SALES TAX RECORDS OF A TAXPAYER BY THE DEPARTMENT OF
 14 REVENUE IT IS DETERMINED THAT DURING THE PERIOD BEING AUDITED THE
 15 TAXPAYER REPORTED AND PAID TAX IN ACCORDANCE WITH A METHOD USED
 16 DURING A PRIOR PERIOD WHICH HAD BEEN AUDITED BY THE DEPARTMENT AND
 17 NOT FOUND TO RESULT IN ANY ADDITIONAL SALES TAX DUE, THE
 18 DEPARTMENT SHALL BE ESTOPPED FROM COLLECTING ANY ADDITIONAL TAXES
 19 AS A RESULT OF THE USE OF THE PREVIOUSLY AUDITED METHOD UNDER
 20 CERTAIN CIRCUMSTANCES; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 27-7-49, Mississippi Code of 1972, is
 23 amended as follows:

24 27-7-49. (1) Returns shall be examined by the commissioner
 25 or his duly authorized agents within three (3) years from the due
 26 date or the date the return was filed, whichever is later, and no
 27 determination of a tax overpayment or deficiency shall be made by



28 the commissioner * * * after the expiration of * * * the
29 three-year period, except as * * * provided in this section and as
30 provided in Section 27-7-307.

31 (2) When an examination of a return made under this article
32 has been commenced, and the taxpayer notified * * * of the
33 examination, either by certified mail or personal delivery by an
34 agent of the commissioner, within the three-year examination
35 period provided in subsection (1) of this section, the
36 determination of the correct tax liability may be made by the
37 commissioner after the expiration of * * * the three-year
38 examination period, provided that * * * the determination shall be
39 made * * * within one (1) year after the expiration of the
40 three-year examination period; however, this limitation and the
41 limitation contained in subsection (1) of this subsection shall
42 not apply:

43 (a) To any tax period for which the taxpayer failed to
44 file a return, in which case the tax, including any applicable
45 penalties and interest, may be assessed by the commissioner at any
46 time and the tax, penalties and/or interest so assessed may be
47 collected by the commissioner as otherwise provided by law.

48 (b) In the case of a false or fraudulent return with
49 the intent to evade tax. In such a case the commissioner is
50 authorized to compute, determine and assess at any time the
51 estimated amount of tax due on the return, including any
52 applicable penalties and interest, from any information in his or



53 her possession, and after the tax, penalties and/or interest are
54 assessed, to collect them as otherwise provided by law.

55 (c) In the case of an agreement in writing entered into
56 by the commissioner and the taxpayer, made prior to the expiration
57 of the applicable time periods provided for in subsections (1) and
58 (2) of this section, consenting to the examination of a return.
59 In such a case the determination of a tax overpayment or
60 deficiency and/or the issuance of an assessment may be made within
61 the agreed upon period. The period agreed upon may be extended by
62 subsequent agreements in writing made before the expiration of the
63 previously agreed upon period.

64 (d) In a case in which a taxpayer requests an extension
65 of time for filing any return required by this article, and the
66 request is granted. In such a case the limitation of time for
67 examining the return and determining any tax overpayment or
68 assessing any tax deficiency from the return shall be extended for
69 a like period.

70 (3) Taxpayers shall keep and maintain an accurate and
71 complete set of records and other information sufficient to allow
72 the department to determine the correct amount of tax due. The
73 records and other information shall be open and available for
74 inspection by the department upon request at a reasonable time and
75 location. Refusal or delay by the taxpayer to provide
76 documentation for examination upon the department's request shall



77 result in an assessment being made from any information available,
78 which shall be prima facie correct.

79 (* * *4) Where the reported taxable income of a taxpayer
80 has been increased or decreased by the Internal Revenue Service,
81 the three-year examination period provided in subsection (1) of
82 this section shall not be applicable, insofar as the Mississippi
83 income tax liability is affected by the specific changes made by
84 said Internal Revenue Service. However, no additional assessment
85 or no refund shall be made under the provisions of this article
86 after three (3) years from the date the Internal Revenue Service
87 disposes of the tax liability in question.

88 * * *

89 (* * *5) Where the reportable taxable income of a taxpayer
90 has been decreased by the carryback of a net casualty loss
91 deduction under Section 27-7-20 or the carryback of a net
92 operating loss deduction under Section 27-7-17, the three-year
93 examination period provided under subsection (1) of this section
94 shall not be applicable insofar as the Mississippi income tax
95 liability is affected by the carryback of the net casualty loss
96 deduction or the carryback of the net operating loss deduction.

97 **SECTION 2.** Section 27-13-49, Mississippi Code of 1972, is
98 amended as follows:

99 27-13-49. (1) Returns shall be examined by the commissioner
100 or his duly authorized agents within three (3) years from the due
101 date or the date the return was filed, whichever is later, and no



102 determination of a tax overpayment or deficiency shall be made by
103 the commissioner * * * after the expiration of * * * the
104 three-year period except as * * * provided in this section.

105 (2) When an examination of a return made under this chapter
106 has been commenced, and the taxpayer notified * * * of the
107 examination by certified mail, or personal delivery by an agent of
108 the commissioner within the three-year examination period provided
109 in subsection (1) of this section, the determination of the
110 correct tax liability may be made by the commissioner after the
111 expiration of * * * the three-year examination period, provided
112 that * * * the determination shall be made * * * within one (1)
113 year after the expiration of the three-year examination period
114 provided for in subsection (1) of this section; however, this
115 limitation and the limitation provided for in subsection (1) of
116 this section shall not apply:

117 (a) To any tax period for which the taxpayer failed to
118 file a return, in which case the tax, including any applicable
119 penalties and interest, may be assessed by the commissioner at any
120 time and the tax, penalties and/or interest so assessed may be
121 collected by the commissioner as otherwise provided by law.

122 (b) In the case of a false or fraudulent return with
123 the intent to evade tax. In such a case the commissioner is
124 authorized to compute, determine, and assess at any time the
125 estimated amount of tax due on the return, including any
126 applicable penalties and interest, from any information in his or



127 her possession, and after the tax, penalties and/or interest are
128 assessed, to collect them as otherwise provided by law.

129 (c) In the case of an agreement in writing entered into
130 by the commissioner and the taxpayer, made prior to the expiration
131 of the applicable time periods provided for in subsections (1) and
132 (2) of this section, consenting to the examination of a return.
133 In such a case the determination of a tax overpayment or
134 deficiency and/or the issuance of an assessment may be made within
135 the agreed upon period. The period agreed upon may be extended by
136 subsequent agreements in writing made before the expiration of the
137 previously agreed upon period.

138 (d) In a case in which a taxpayer requests an extension
139 of time for filing any return required by this chapter, and the
140 request is granted. In such a case the limitation of time for
141 examining the return and determining any tax overpayment or
142 assessing any tax deficiency from the return shall be extended for
143 a like period.

144 (3) Taxpayers shall keep and maintain an accurate and
145 complete set of records and other information sufficient to allow
146 the department to determine the correct amount of tax due. The
147 records and other information shall be open and available for
148 inspection by the department upon request at a reasonable time and
149 location. Refusal or delay by the taxpayer to provide
150 documentation for examination upon the department's request shall



151 result in an assessment being made from any information available,
152 which shall be prima facie correct.

153 (* * *4) Where the federal income tax return of a taxpayer
154 has been changed by the Internal Revenue Service, the three-year
155 examination period provided in subsection (1) of this section
156 shall not be applicable, insofar as the Mississippi franchise tax
157 liability is affected by the specific changes made by said
158 Internal Revenue Service. However, no additional assessment or no
159 refund shall be made under the provisions of this chapter after
160 three (3) years from the date the Internal Revenue Service
161 disposes of the tax liability in question.

162 * * *

163 (5) A taxpayer may apply to the commissioner for revision of
164 any return filed under this chapter at any time within three (3)
165 years from the due date, or the date the return was filed,
166 whichever is later.

167 **SECTION 3.** Section 27-65-42, Mississippi Code of 1972, is
168 amended as follows:

169 27-65-42. (1) The amount of taxes due on any return which
170 has been filed as required by this chapter shall be determined and
171 assessed within thirty-six (36) months from the date * * * the
172 return was filed * * * except as otherwise provided in this
173 section and Section 27-65-55.

174 * * *



175 (2) When an examination of a taxpayer's records to verify
176 returns made under this chapter has been initiated and the
177 taxpayer notified of the examination, either by certified mail or
178 personal delivery by an agent of the commissioner, within the
179 thirty-six-month examination period provided for in subsection (1)
180 of this section, the determination of the correct tax liability
181 shall be made by the commissioner within one (1) year after the
182 expiration of the thirty-six-month examination period; however,
183 this limitation shall not apply:

184 (a) To any tax period for which the taxpayer failed to
185 file a return, in which case the tax, including any applicable
186 penalties and interest, may be assessed by the commissioner at any
187 time and the tax, penalties and/or interest so assessed may be
188 collected by the commissioner as otherwise provided by law.

189 (b) In the case of a false or fraudulent return with
190 the intent to evade tax. In such a case the commissioner is
191 authorized to compute, determine, and assess at any time the
192 estimated amount of tax due on the return, including any
193 applicable penalties and interest, from any information in his or
194 her possession, and after the tax, penalties and/or interest are
195 assessed, to collect them as otherwise provided by law.

196 (c) In the case of an agreement in writing entered into
197 by the commissioner and the taxpayer, made prior to the expiration
198 of the applicable time periods provided for in subsections (1) and
199 (2) of this section, consenting to the examination of a return.



200 In such a case the determination of a tax overpayment or
201 deficiency and/or the issuance of an assessment may be made within
202 the agreed upon period. The period agreed upon may be extended by
203 subsequent agreements in writing made before the expiration of the
204 previously agreed upon period.

205 (d) In a case in which a taxpayer requests an extension
206 of time for filing any return required by this chapter, and the
207 request is granted. In such a case the limitation of time for
208 examining the return and determining any tax overpayment or
209 assessing any tax deficiency from the return shall be extended for
210 a like period.

211 (3) Taxpayers shall keep and maintain an accurate and
212 complete set of records and other information sufficient to allow
213 the department to determine the correct amount of tax due. The
214 records and other information shall be open and available for
215 inspection by the department upon request at a reasonable time and
216 location. Refusal or delay by the taxpayer to provide
217 documentation for examination upon the department's request shall
218 result in an assessment being made from any information available,
219 which shall be prima facie correct.

220 **SECTION 4.** Section 27-7-313, Mississippi Code of 1972, is
221 amended as follows:

222 27-7-313. In the case of any overpayment of any tax,
223 interest or penalty levied or provided for in Article 1 of this
224 chapter, or in this article, whether by reason of excessive



225 withholding, error on the part of the taxpayer, erroneous
226 assessment of tax, or otherwise, the excess shall be refunded to
227 the taxpayer.

228 When, upon examination of any return made under this article,
229 or under the provisions of Article 1 of this chapter, it appears
230 that an amount of income tax has been paid in excess of the amount
231 properly due, then the amount of the excess shall be credited
232 against any income tax then due from the taxpayer under any other
233 return required by this article, or Article 1 of this chapter.
234 Refunds or credits may be withheld or applied against any other
235 tax determined finally to be due if the taxpayer has failed to pay
236 any tax finally due as required by the provisions of the laws
237 administered by the * * * department. Any excess after such
238 application shall be certified to the State Auditor of Public
239 Accounts by the commissioner. The * * * Auditor is hereby
240 authorized to make * * * any investigation and audit of the claim
241 as he finds necessary. If he finds that the commissioner is
242 correct in his determination, the Auditor may issue his warrant to
243 the State Treasurer in favor of the taxpayer for the amount of tax
244 erroneously paid into the State Treasury. No refund shall be
245 granted under this article or under the provisions of Article 1 of
246 this chapter unless a claim for * * * the refund is made within
247 three (3) years from the date the return is due, or within three
248 (3) years from the final day of an extension period previously
249 granted by the commissioner pursuant to the provisions of Section



250 27-7-50; however, the restrictions imposed by this section do not
251 apply to those refund requests or claims made in compliance
252 with * * * Section 27-7-49.

253 The State Treasurer shall withhold from all income taxes
254 collected each month an amount necessary to make refunds expected
255 to be approved by the State Auditor during the following month.
256 This amount shall be placed in a special fund, separate and apart
257 from the General Fund of the state, and used for the purpose of
258 making refunds under the income tax laws of the state. All
259 refunds made under this article shall be made as quickly as
260 possible upon receipt of the proper proof, as required by the
261 State Auditor.

262 In order to obtain a refund, * * * an employee shall attach
263 to his return a copy of the withholding statement required to be
264 furnished him by his employer as provided in Section 27-7-311.
265 The making of any refund shall not be conclusive of the tax due by
266 any individual, but shall be made subject to the future audit of
267 his return and the determination of his liability. Bond
268 requirements of Section 7-7-57 shall not apply to warrants for
269 refund of income tax.

270 * * *

271 **SECTION 5.** Section 27-73-5, Mississippi Code of 1972, is
272 amended as follows:

273 27-73-5. Except as otherwise provided in Sections 27-7-49,
274 27-13-49 and 27-65-42, all suits by any taxpayer for the recovery



275 of any privilege, income, franchise, or other excise tax, and all
276 applications or proceedings for any refund or credit of * * *
277 these taxes shall be filed or made within three (3) years next
278 after the return was filed, or from the date the assessment of the
279 tax was made, or from the date the tax was paid, as the case may
280 be, whichever is the earlier, and no recovery of taxes under any
281 such suit shall be had and no refund of taxes shall be made
282 unless * * * the suit or application was filed within * * * the
283 period of limitation.

284 * * * However, as to income taxes the three-year statute of
285 limitations shall be extended to six (6) years in cases where the
286 reported net income of a taxpayer has been reduced by the * * *
287 Internal Revenue Service for any taxable period.

288 **SECTION 6.** Section 27-65-37, Mississippi Code of 1972, is
289 amended as follows:

290 27-65-37. (1) If adequate records of the gross income or
291 gross proceeds of sales are not maintained or invoices preserved
292 as provided herein, or if an audit of the records of a taxpayer,
293 or any return filed by him, or any other information discloses
294 that taxes are due and unpaid, the commissioner shall make
295 assessments of taxes, damages, and interest from any information
296 available, which shall be prima facie correct. However, if in an
297 audit of the records of a taxpayer it is determined that during
298 the period being audited the taxpayer reported and paid tax in
299 accordance with a method used during a prior period which had been



300 audited by the commissioner and not found to result in any
301 additional tax due, the commissioner shall be estopped from
302 collecting any additional tax as a result of the use of this
303 previously audited method for any period prior to notification by
304 the commissioner or his agent during the current audit that use of
305 the previously audited method would result in additional tax being
306 due if it is determined, through all information available
307 regarding this taxpayer, that:

308 (a) The method in issue was previously audited by the
309 commissioner with no additional tax determined to be due under
310 such method;

311 (b) The method under consideration in the current audit
312 is the same method that was used in the prior audit;

313 (c) There has not been a statutory or regulatory change
314 that would have resulted in additional tax being due under this
315 method after the statutory or regulatory change; and

316 (d) The taxpayer detrimentally relied on the fact that
317 this method had been previously audited and not found to result in
318 additional tax.

319 (2) The commissioner shall give notice to the taxpayer
320 of * * * the assessments and demand payment of the tax, damages
321 and interest within sixty (60) days from the date of the notice.
322 The notice shall be sent by regular mail or delivered by an agent
323 of the commissioner either to the taxpayer or someone of suitable



324 age and discretion at the taxpayer's residence or place of
325 business.

326 (3) If the taxpayer shall fail or refuse to comply with the
327 notice of assessment or shall fail to petition for a hearing, the
328 commissioner shall proceed as provided in Section 27-65-39.

329 **SECTION 7.** Nothing in this act shall affect or defeat any
330 refund claim, assessment, appeal, suit, right or cause of action
331 for taxes due or accrued under the laws of this state for any tax
332 period and/or tax year beginning before the date on which this act
333 becomes effective, whether such refund claims, assessments,
334 appeals, suits or actions have been begun or filed before the date
335 on which this act becomes effective or are begun or filed
336 thereafter; and the provisions of the tax laws of this state in
337 effect prior to the effective date of this act are expressly
338 continued in full force, effect and operation for the purpose of
339 any refund claim, assessment, appeal, suit, right or cause of
340 action for taxes paid, due or accrued under the laws of this state
341 for any tax period and/or tax year beginning before the date on
342 which this act goes into effect, for the collection and enrollment
343 of liens for any taxes due or accrued for any tax period and/or
344 tax year beginning before the date on which this act goes into
345 effect and for the execution of any warrant under such laws for a
346 tax period and/or tax year beginning before the date on which this
347 act becomes effective, and for the imposition of any penalties,
348 forfeitures or claims for failure to comply with such laws in



349 regard to any tax period and/or tax year beginning prior to the
350 date on which this act becomes effective.

351 **SECTION 8.** This act shall take effect and be in force from
352 and after January 1, 2013.

