

By: Representative DeLano

To: County Affairs; Revenue
and Expenditure General Bills

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1567

1 AN ACT TO ENACT THE "LOCAL GOVERNMENT DEBT COLLECTION SETOFF
2 ACT"; TO AUTHORIZE COUNTIES AND MUNICIPALITIES TO SUBMIT CERTAIN
3 DEBTS OWED TO THEM TO THE DEPARTMENT OF REVENUE FOR COLLECTION
4 THROUGH A SETOFF AGAINST THE DEBTORS' MISSISSIPPI INCOME TAX
5 REFUND; TO PROVIDE THAT THE COUNTIES AND MUNICIPALITIES SHALL
6 UTILIZE THE MISSISSIPPI ASSOCIATION OF SUPERVISORS OR THE
7 MISSISSIPPI MUNICIPAL LEAGUE, AS APPROPRIATE, AS THEIR AGENTS IN
8 UTILIZING THIS PROCEDURE; TO PROVIDE THE AMOUNT OF THE DEBT AND
9 INCOME TAX REFUNDS TO WHICH THIS ACT APPLIES; TO PROVIDE FOR THE
10 DUTIES OF THE DEPARTMENT OF REVENUE UNDER THIS ACT; TO AUTHORIZE
11 THE EXCHANGE OF INFORMATION BETWEEN THE DEPARTMENT OF REVENUE,
12 LOCAL GOVERNMENT AND THEIR MEMBER ORGANIZATIONS THAT IS NECESSARY
13 TO ACCOMPLISH AND EFFECTUATE THE INTENT OF THIS ACT; TO PROVIDE
14 THAT INFORMATION OBTAINED FROM THE DEPARTMENT OF REVENUE SHALL
15 RETAIN ITS CONFIDENTIALITY AND TO PROVIDE PENALTIES FOR THE
16 UNLAWFUL DISCLOSURE OF SUCH INFORMATION; TO AMEND SECTION 27-7-83,
17 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED
18 PURPOSES.

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

20 **SECTION 1.** Sections 1 through 11 of this act shall be known
21 as the "Local Government Debt Collection Setoff Act."

22 **SECTION 2.** The purpose of Sections 1 through 11 of this act
23 is to establish as public policy that all claimant local
24 governments and the Department of Revenue shall cooperate in
25 identifying debtors who owe money to local governments and who
26 qualify for refunds from the Department of Revenue. It is also



27 the intent of Sections 1 through 11 of this act that procedures be
28 established for setting off against any refund the sum of any debt
29 owed to a local government. Furthermore, it is the legislative
30 intent that Sections 1 through 11 of this act be liberally
31 construed so as to effectuate these purposes as far as legally and
32 practically possible.

33 **SECTION 3.** As used in Sections 1 through 11 of this act:

34 (a) "Claimant local government" means counties and
35 municipalities acting through their nonprofit member organizations
36 with respect to the collection of any debt owed and finalized by
37 law, ordinance, order, judgement or resolution.

38 (b) "Debtor" means any person owing a debt to any
39 claimant local government.

40 (c) "Debt" means any civil judgement or fine that:

41 (i) The time for appeal has expired; and

42 (ii) Is owed to any claimant local government.

43 (d) "Department" means the Mississippi Department of
44 Revenue.

45 (e) "Local government" means a county or municipality
46 including, but not limited to, all corporations and
47 instrumentalities whose governing boards are comprised of a
48 majority of members who are appointed or elected by counties or
49 municipalities.

50 (f) "Member organization" means the Mississippi
51 Association of Supervisors for counties, the Mississippi Municipal



52 League for municipalities, or entities established through or
53 contracted by these member organizations for the purpose of
54 facilitating debt collection under Sections 1 through 11 of this
55 act.

56 (g) "Net proceeds collected" means gross proceeds
57 collected through setoff against a debtor's refund less the
58 collection assistance fees authorized in Sections 1 through 11 of
59 this act.

60 (h) "Person" means any individual, firm, partnership,
61 association, trustee, receiver, assignee, corporation, entity,
62 limited liability company, utility or joint venture.

63 (i) "Refund" means the Mississippi income tax refund
64 which the department determines to be due any individual tax
65 payer.

66 (j) "Setoff" means the department's legal right to
67 reduce the debtor's claim to a Mississippi income tax refund from
68 the department by a debt the claimant local government properly
69 establishes under Sections 1 through 11 of this act which is owed
70 by the debtor.

71 **SECTION 4.** (1) The collection remedy in Sections 1 through
72 11 of this act is in addition to and not in substitution for any
73 other remedy available by law.

74 (2) A local government or through its member organization
75 may submit a debt owed to it for collection to the department
76 under Sections 1 through 11 of this act.



77 **SECTION 5.** Sections 1 through 11 of this act only apply to a
78 debt that is at least Fifty Dollars (\$50.00) and refunds to which
79 the debtor is entitled of at least Fifty Dollars (\$50.00).
80 Different types of debts under Fifty Dollars (\$50.00) may be
81 combined to satisfy debt threshold if they are owed by the same
82 debtor.

83 **SECTION 6.** (1) Once a debt owed is verified under this act,
84 a claimant local government, or its member organization on its
85 behalf, seeking to collect a debt through setoff shall notify the
86 department in writing and supply information necessary to identify
87 the debtor whose refund is sought to be setoff. The local
88 government, or its member organization, shall notify the
89 department in writing within thirty (30) days of when a debt of
90 which the department has previously been noticed has been paid or
91 is no longer owed to it.

92 (2) The department, upon receipt of notification, shall
93 determine each year whether the debtor to the claimant local
94 government is entitled to a refund of at least Fifty Dollars
95 (\$50.00) from the department. Upon determination by the
96 department that a debtor specified by a claimant local government
97 qualifies for such a refund, the department shall set off the debt
98 against the refund to which the debtor would otherwise be entitled
99 and shall refund any remaining balance to the debtor. The
100 department shall mail the debtor written notice that the setoff
101 has occurred and shall credit the net proceeds collected to the



102 claimant local government, after deducting the total collection
103 assistance fee owed to the department and the member organization.

104 **SECTION 7.** When there are multiple claims by two (2) or more
105 member organizations submitting debts on behalf of local
106 governments, the claims have priority based on the date each
107 member organization filed the claim with the department. When
108 there are multiple claims among local governments whose debts are
109 submitted by the same member organization, the claims have
110 priority based on the date each local government requested the
111 member organization to submit the debts on its behalf.

112 **SECTION 8.** The department shall collect a fee as part of the
113 debt and retain five percent (5%) for its administrative costs.

114 **SECTION 9.** (1) Along with the transmittal of the net
115 proceeds collected on behalf of the claimant local government, the
116 department shall provide the local government with an accounting
117 of the setoffs for which payment is being made. The accounting
118 shall, whenever possible, include the full names of the debtors,
119 the debtor's social security numbers or federal tax identification
120 numbers, the gross proceeds collected per setoff, the net proceeds
121 collected per setoff and the collection assistance fees added to
122 the debt collected per setoff.

123 (2) Upon receipt by a claimant local government of net
124 proceeds collected on the claimant agency's behalf by the
125 department, the claimant local government shall credit the
126 debtor's obligation with the net proceeds collected.



127 **SECTION 10.** (1) The department, the local government or its
128 member organization on its behalf may exchange information
129 necessary to accomplish and effectuate the intent of Sections 1
130 through 11 of this act.

131 (2) The information obtained by a local government or its
132 member organization in accordance with the provisions of Sections
133 1 through 11 of this act shall retain its confidentiality and
134 shall only be used by the local government or member organization
135 in the pursuit of its debt collection duties and practices; and
136 any employee or former employee of any local government or its
137 member organization who unlawfully discloses any such information
138 for any other purpose, except as otherwise specifically authorized
139 by law, shall be subject to the same penalties specified by law
140 for unauthorized disclosure of confidential information by an
141 agency or employee of the department.

142 **SECTION 11.** The department shall promulgate rules and
143 regulations pursuant to the Mississippi Administrative Procedures
144 Act which are necessary to implement and carry out its duties and
145 functions under Sections 1 through 11 of this act. Local
146 governments may also promulgate rules and regulations necessary
147 for the local administration of their authority granted under
148 Sections 1 through 11 of this act.

149 **SECTION 12.** Section 27-7-83, Mississippi Code of 1972, is
150 amended as follows:



151 27-7-83. (1) Returns and return information filed or
152 furnished under the provisions of this chapter shall be
153 confidential, and except in accordance with proper judicial order,
154 as otherwise authorized by this section * * *, as authorized in
155 Section 27-4-3 or as authorized under Section 10 of this act, it
156 shall be unlawful for the Commissioner of Revenue or any deputy,
157 agent, clerk or other officer or employee of the Department of
158 Revenue or the Mississippi Department of Information Technology
159 Services, or any former employee thereof, to divulge or make known
160 in any manner the amount of income or any particulars set forth or
161 disclosed in any report or return required. The provisions of
162 this section shall apply fully to any federal return, a copy of
163 any portion of a federal return, or any information reflected on a
164 federal return which is attached to or made a part of the state
165 tax return. Likewise, the provisions of this section shall apply
166 to any federal return or portion thereof, or to any federal return
167 information data which is acquired from the Internal Revenue
168 Service for state tax administration purposes pursuant to the
169 Federal-State Exchange Program cited at Section 6103, Federal
170 Internal Revenue Code. The term "proper judicial order" as used
171 in this section shall not include subpoenas or subpoenas duces
172 tecum, but shall include only those orders entered by a court of
173 record in this state after furnishing notice and a hearing to the
174 taxpayer and the Department of Revenue. The court shall not
175 authorize the furnishing of such information unless it is



176 satisfied that the information is needed to pursue pending
177 litigation wherein the return itself is in issue, or the judge is
178 satisfied that the need for furnishing the information outweighs
179 the rights of the taxpayer to have such information secreted.

180 (2) Returns and return information with respect to taxes
181 imposed by this chapter shall be open to inspection by or
182 disclosure to the Commissioner of the Internal Revenue Service of
183 the United States, or the proper officer of any state imposing an
184 income tax similar to that imposed by this chapter, or the
185 authorized representatives of such agencies. Such inspection
186 shall be permitted, or such disclosure made, only upon written
187 request by the head of such agencies, or the district director in
188 the case of the Internal Revenue Service, and only to the
189 representatives of such agencies designated in a written statement
190 to the Commissioner of Revenue as the individuals who are to
191 inspect or to receive the return or return information on behalf
192 of such agency. The Commissioner of Revenue is authorized to
193 enter into agreements with the Internal Revenue Service and with
194 other states for the exchange of returns and return information
195 data, or the disclosure of returns or return information data to
196 such agencies, only to the extent that the statutes of the United
197 States or of such other state, as the case may be, grant
198 substantially similar privileges to the proper officer of this
199 state charged with the administration of the tax laws of this
200 state.



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

203 (i) In the case of the return of an individual,
204 that individual;

205 (ii) In the case of an income tax return filed
206 jointly, either of the individuals with respect to whom the return
207 is filed;

208 (iii) In the case of the return of a partnership,
209 any person who was a member of such partnership during any part of
210 the period covered by the return;

211 (iv) In the case of the return of a corporation or
212 a subsidiary thereof, any person designated by resolution of its
213 board of directors or other similar governing body, or any officer
214 or employee of such corporation upon written request signed by any
215 principal officer and attested to by the secretary or other
216 officer;

217 (v) In the case of the return of an estate, the
218 administrator, executor or trustee of such estate, and any heir at
219 law, next of kin or beneficiary under the will, of the decedent,
220 but only to the extent that such latter persons have a material
221 interest which will be affected by information contained therein;

222 (vi) In the case of the return of a trust, the
223 trustee or trustees, jointly or separately, and any beneficiary of
224 such trust, but only to the extent that such beneficiary has a



225 material interest which will be affected by information contained
226 therein;

227 (vii) In the case of the return of an individual
228 or a return filed jointly, any claimant agency or claimant local
229 government seeking to collect a debt through the set-off procedure
230 established in Sections 27-7-701 through 27-7-713 * * *, Sections
231 27-7-501 through 27-7-519 and Sections 1 through 11 of this act,
232 from an individual with respect to whom the return is filed.

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

237 (c) If substantially all of the property of the person
238 with respect to whom the return is filed is in the hands of a
239 trustee in bankruptcy or receiver, such return or returns for
240 prior years of such person shall, upon written request, be open to
241 inspection by or disclosure to such trustee or receiver, but only
242 if the Commissioner of Revenue finds that such receiver or
243 trustee, in his fiduciary capacity, has a material interest which
244 will be affected by information contained therein.

245 (d) Any return to which this section applies shall,
246 upon written request, also be open to inspection by or disclosure
247 to the attorney-in-fact duly authorized in writing by any of the
248 persons described in paragraph (a) of this subsection to inspect



249 the return or receive the information on his behalf, subject to
250 the conditions provided in paragraph (a).

251 (e) Return information with respect to any taxpayer may
252 be open to inspection by or disclosure to any person authorized by
253 this subsection to inspect any return of such taxpayer if the
254 Commissioner of Revenue determines that such disclosure would not
255 seriously impair state tax administration.

256 (4) The State Auditor and the employees of his office shall
257 have the right to examine only such tax returns as are necessary
258 for auditing the Department of Revenue, and the same prohibitions
259 against disclosure which apply to the Department of Revenue shall
260 apply to the State Auditor and his employees or former employees.

261 (5) Officers and employees of the Mississippi Development
262 Authority who execute a confidentiality agreement with the
263 Department of Revenue shall be authorized to discuss and examine
264 information to which this section applies at the offices of the
265 Mississippi Department of Revenue. This disclosure is limited to
266 information necessary to properly administer the programs under
267 the jurisdiction of the Mississippi Development Authority. The
268 Department of Revenue is authorized to disclose to officers and
269 employees of the Mississippi Development Authority who execute a
270 confidentiality agreement the information necessary under the
271 circumstances. The same prohibitions against disclosure which
272 apply to the Department of Revenue shall apply to the officers or
273 employees of the Mississippi Development Authority.



274 (6) Information required by the University Research Center
275 to prepare the analyses required by Sections 57-13-101 through
276 57-13-109 shall be furnished to the University Research Center
277 upon request. It shall be unlawful for any officer or employee of
278 the University Research Center to divulge or make known in any
279 manner the amount of income or any particulars set forth or
280 disclosed in any information received by the center from the
281 Department of Revenue other than as may be required by Sections
282 57-13-101 through 57-13-109 in an analysis prepared pursuant to
283 Sections 57-13-101 through 57-13-109.

284 (7) Information required by the Mississippi Development
285 Authority to prepare the reports required by Section 57-1-12.2
286 shall be furnished to the Mississippi Development Authority upon
287 request. It shall be unlawful for any officer or employee of the
288 Mississippi Development Authority to divulge or make known in any
289 manner the amount of income or any particulars set forth or
290 disclosed in any information received by the Mississippi
291 Development Authority from the Department of Revenue other than as
292 may be required by Section 57-1-12.2 in a report prepared pursuant
293 to Section 57-1-12.2.

294 (8) Nothing in this section shall be construed to prohibit
295 the publication of statistics, so classified as to prevent the
296 identification of particular reports or returns and the items
297 thereof, or the inspection by the Attorney General, or any other
298 attorney representing the state, of the report or return of any



299 taxpayer who shall bring action to set aside the tax thereon, or
300 against whom any action or proceeding has been instituted to
301 recover any tax or penalty imposed.

302 (9) Nothing in this section shall prohibit the commissioner
303 from making available information necessary to recover taxes owing
304 the state pursuant to the authority granted in Section 27-75-16.

305 (10) Reports and returns required under the provisions of
306 this chapter shall be preserved in accordance with approved
307 records control schedules. No records, however, may be destroyed
308 without the approval of the Director of the Department of Archives
309 and History.

310 (11) The Department of Revenue is authorized to disclose to
311 the Child Support Unit and to the Fraud Investigation Unit of the
312 Department of Human Services without the need for a subpoena or
313 proper judicial order the name, address, social security number,
314 amount of income, source of income, assets and other relevant
315 information, records and tax forms for individuals who are
316 delinquent in the payment of any child support as defined in
317 Section 93-11-101 or who are under investigation for fraud or
318 abuse of any state or federal program or statute as provided in
319 Section 43-1-23.

320 (12) Nothing in this section shall prohibit the Department
321 of Revenue from exchanging information with the federal government
322 that is necessary to offset income tax refund payment on debts
323 owed to this state or the United States.



324 (13) Nothing in this section shall prohibit the department
325 from making available information that is necessary to be
326 disclosed for the administration and enforcement of Section
327 27-7-87.

328 **SECTION 13.** This act shall take effect and be in force from
329 and after January 1, 2017.

