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To: Finance

SENATE BILL NO. 2257
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 27-7-83, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE THE STATE AUDITOR AND HIS EMPLOYEES TO EXAMINE THE TAX
3 RETURNS AS ARE NECESSARY FOR AUDITING BENEFITS ADMINISTERED UNDER
4 THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES AND THE
5 UNITED STATES DEPARTMENT OF AGRICULTURE AND TO MAKE INFORMATION
6 RELATED TO THE AUDITS AVAILABLE TO STATE AGENCIES RESPONSIBLE FOR
7 THE ADMINISTRATION OF SUCH BENEFITS; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 27-7-83, Mississippi Code of 1972, is
10 amended as follows:

11 27-7-83. (1) Returns and return information filed or
12 furnished under the provisions of this chapter shall be
13 confidential, and except in accordance with proper judicial order,
14 as otherwise authorized by this section, as authorized in Section
15 27-4-3 or as authorized under Section 27-7-821, it shall be
16 unlawful for the Commissioner of Revenue or any deputy, agent,
17 clerk or other officer or employee of the Department of Revenue or
18 the Mississippi Department of Information Technology Services, or
19 any former employee thereof, to divulge or make known in any
20 manner the amount of income or any particulars set forth or



disclosed in any report or return required. The provisions of this section shall apply fully to any federal return, a copy of any portion of a federal return, or any information reflected on a federal return which is attached to or made a part of the state tax return. Likewise, the provisions of this section shall apply to any federal return or portion thereof, or to any federal return information data which is acquired from the Internal Revenue Service for state tax administration purposes pursuant to the Federal-State Exchange Program cited at Section 6103, Federal Internal Revenue Code. The term "proper judicial order" as used in this section shall not include subpoenas or subpoenas duces tecum, but shall include only those orders entered by a court of record in this state after furnishing notice and a hearing to the taxpayer and the Department of Revenue. The court shall not authorize the furnishing of such information unless it is satisfied that the information is needed to pursue pending litigation wherein the return itself is in issue, or the judge is satisfied that the need for furnishing the information outweighs the rights of the taxpayer to have such information secreted.

(2) Returns and return information with respect to taxes imposed by this chapter shall be open to inspection by or disclosure to the Commissioner of the Internal Revenue Service of the United States, or the proper officer of any state imposing an income tax similar to that imposed by this chapter, or the authorized representatives of such agencies. Such inspection



shall be permitted, or such disclosure made, only upon written request by the head of such agencies, or the district director in the case of the Internal Revenue Service, and only to the representatives of such agencies designated in a written statement to the Commissioner of Revenue as the individuals who are to inspect or to receive the return or return information on behalf of such agency. The Commissioner of Revenue is authorized to enter into agreements with the Internal Revenue Service and with other states for the exchange of returns and return information data, or the disclosure of returns or return information data to such agencies, only to the extent that the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of the tax laws of this state.

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

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

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

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



71 (iv) In the case of the return of a corporation or
72 a subsidiary thereof, any person designated by resolution of its
73 board of directors or other similar governing body, or any officer
74 or employee of such corporation upon written request signed by any
75 principal officer and attested to by the secretary or other
76 officer;

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

82 (vi) In the case of the return of a trust, the
83 trustee or trustees, jointly or separately, and any beneficiary of
84 such trust, but only to the extent that such beneficiary has a
85 material interest which will be affected by information contained
86 therein;

87 (vii) In the case of the return of an individual
88 or a return filed jointly, any claimant agency or claimant local
89 government seeking to collect a debt through the setoff procedure
90 established in Sections 27-7-701 through 27-7-713, Sections
91 27-7-501 through 27-7-519 and/or Sections 27-7-801 through
92 27-7-823, as the case may be, from an individual with respect to
93 whom the return is filed.

94 (b) If an individual described in paragraph (a) is
95 legally incompetent, the applicable return shall, upon written



request, be open to inspection by or disclosure to the committee, trustee or guardian of his estate.

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

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

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

(4) The State Auditor and the employees of his office shall have the right to examine only such tax returns as are necessary for auditing the Department of Revenue * * * and auditing benefits administered under the United States Department of Health and



Human Services and the United States Department of Agriculture.
The State Auditor and the employees of his office may make
information related to auditing such benefits available to and may
exchange the information with state agencies responsible for the
administration of the benefits. Except as otherwise provided in
this subsection (4), the same prohibitions against disclosure
which apply to the Department of Revenue shall apply to the State
Auditor and his employees or former employees.

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

(6) Information required by the University Research Center
to prepare the analyses required by Sections 57-13-101 through
57-13-109 shall be furnished to the University Research Center
upon request. It shall be unlawful for any officer or employee of



the University Research Center to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the center from the Department of Revenue other than as may be required by Sections 57-13-101 through 57-13-109 in an analysis prepared pursuant to Sections 57-13-101 through 57-13-109.

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

(8) Information necessary to comply with Chapter 13, Title 85, may be furnished to financial institutions. It shall be unlawful for any officer or employee of the financial institution to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the financial institution from the Department of Revenue other than as may be authorized by Chapter 13, Title 85.

(9) Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the



171 identification of particular reports or returns and the items
172 thereof, or the inspection by the Attorney General, or any other
173 attorney representing the state, of the report or return of any
174 taxpayer who shall bring action to set aside the tax thereon, or
175 against whom any action or proceeding has been instituted to
176 recover any tax or penalty imposed.

177 (10) Nothing in this section shall prohibit the commissioner
178 from making available information necessary to recover taxes owing
179 the state pursuant to the authority granted in Section 27-75-16.

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

185 (12) The Department of Revenue is authorized to disclose to
186 the Child Support Unit and to the Fraud Investigation Unit of the
187 Department of Human Services without the need for a subpoena or
188 proper judicial order the name, address, social security number,
189 amount of income, source of income, assets and other relevant
190 information, records and tax forms for individuals who are
191 delinquent in the payment of any child support as defined in
192 Section 93-11-101 or who are under investigation for fraud or
193 abuse of any state or federal program or statute as provided in
194 Section 43-1-23.



195 (13) Nothing in this section shall prohibit the Department
196 of Revenue from exchanging information with the federal government
197 that is necessary to offset income tax refund payment on debts
198 owed to this state or the United States.

199 (14) Nothing in this section shall prohibit the department
200 from making available information that is necessary to be
201 disclosed for the administration and enforcement of Section
202 27-7-87.

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

