

Senate Amendments to House Bill No. 861

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

9 **SECTION 1.** Section 27-77-5, Mississippi Code of 1972, is
10 amended as follows:

11 27-77-5. (1) Any taxpayer aggrieved by an assessment of tax
12 by the agency, by the agency's denial of a refund claim, by the
13 denial of a waiver of tag penalty, or the denial of a claim to tax
14 credits or incentives, and who wishes to contest the action of the
15 agency shall, within sixty (60) days from the date the agency
16 mailed or delivered written notice of the action, file an appeal
17 in writing with the Board of Review requesting a hearing and
18 correction of the contested action specifying in detail the relief
19 requested and any other information that might be required by
20 regulation. Even after an appeal is filed with the Board of
21 Review, the agency retains the authority to change the assessment,
22 the denial of refund claim or the denial of tag penalty being
23 appealed.

24 (2) Upon receipt of a timely written appeal from a tax
25 assessment, refund claim denial, denial of waiver of a tag

26 penalty, or the denial of a claim to tax credits or incentives, a
27 hearing shall be scheduled before the Board of Review unless it is
28 determined that the relief requested in the written appeal should
29 be granted without a hearing. A notice of the hearing shall be
30 mailed to the taxpayer advising the taxpayer of the date, time and
31 location of the hearing. The taxpayer or his designated
32 representative shall attend the hearing unless a request is made
33 to, and granted by, the Board of Review to allow the taxpayer to
34 submit his position in writing or by electronic transmission in
35 lieu of attendance. Failure of the taxpayer or his designated
36 representative to attend a hearing or to submit his position in
37 writing or by electronic transmission by the date specified by the
38 Board of Review or by the hearing date, if no date was specified,
39 shall constitute a withdrawal of the appeal.

40 (3) At a hearing before the Board of Review on a tax
41 assessment, denial of refund claim, denial of waiver of a tag
42 penalty, or the denial of a claim to tax credits or incentives,
43 the Board of Review shall try the issues presented, according to
44 law and the facts and within the guidelines established by
45 regulation. The hearing before the Board of Review shall be
46 informal and no official transcript will be made of the hearing.
47 At the earliest practical date after the hearing, the members of
48 the Board of Review that heard the appeal shall make a
49 determination on the matter presented and notify the taxpayer of
50 its findings by mailing a copy of its order to the taxpayer. If
51 the order involves the appeal of a denial of a waiver of tag

52 penalty, a copy of the order shall also be mailed to the tax
53 collector that imposed the penalty. If in the order the Board of
54 Review orders the taxpayer to pay a tax assessment, the taxpayer
55 shall, within sixty (60) days from the date the Board of Review
56 mailed the order, pay the amount ordered to be paid or appeal the
57 order of the Board of Review to the Board of Tax Appeals. After
58 the sixty-day period, if an appeal is not filed by the taxpayer
59 with the Executive Director of the Board of Tax Appeals and the
60 tax determined by the Board of Review is not paid, the agency
61 shall proceed to collect the tax assessment as determined by the
62 Board of Review.

63 (4) Any taxpayer aggrieved by an order of the Board of
64 Review affirming a tax assessment, the denial of a refund claim,
65 the denial of a waiver of tag penalty, or the denial of a claim to
66 tax credits or incentives, and who wishes to contest the order
67 shall, within sixty (60) days from the date the Board of Review
68 mailed the order being contested, file an appeal to the Board of
69 Tax Appeals. The appeal shall be in writing and shall request a
70 hearing and reversal or modification of the order of the Board of
71 Review, specify in detail the relief requested and contain any
72 other information that might be required by regulation, and be
73 filed with the executive director. At the time of filing his
74 appeal with the executive director, the taxpayer shall also file a
75 copy of his written appeal with the Board of Review. Even after
76 an appeal is filed with the Executive Director of the Board of Tax
77 Appeals, the Board of Review retains the authority to amend and/or

78 correct the order being appealed at any time prior to a decision
79 by the Board of Tax Appeals on the appeal. Failure to timely file
80 a written appeal with the executive director within the sixty-day
81 period shall make the order of the Board of Review final and not
82 subject to further review by the Board of Tax Appeals or a court,
83 other than as to the issue of whether a written appeal from the
84 order of the Board of Review was timely filed with the executive
85 director. If the Board of Review shall not issue an order within
86 six (6) months of a hearing, the taxpayer may treat the failure to
87 issue an order as a denial of the relief requested in the hearing
88 and appeal such deemed denial to the Board of Tax Appeals as
89 provided in this section. A taxpayer's filing or failure to file
90 an appeal based on this deemed denial shall not prejudice or
91 otherwise jeopardize the taxpayer's right to file an appeal with
92 the Board of Tax Appeals upon the Board of Review's issuance of a
93 subsequent order in the manner provided for in this section.

94 (5) Upon receipt of a written appeal from an order of the
95 Board of Review affirming a tax assessment, refund claim denial,
96 denial of waiver of a tag penalty, or the denial of a claim to tax
97 credits or incentives, the executive director shall schedule a
98 hearing before the Board of Tax Appeals on the appeal. A notice
99 of this hearing shall be mailed to the taxpayer and the agency
100 advising them of the date, time and location of hearing. The
101 taxpayer or his designated representative shall attend the hearing
102 unless a request is made to and granted by the Executive Director
103 of the Board of Tax Appeals to allow the taxpayer to submit his

104 position in writing or by electronic transmission in lieu of
105 attendance. Failure of the taxpayer or his designated
106 representative to attend a hearing or to submit his position in
107 writing or by electronic transmission by the date specified by the
108 executive director or by the hearing date, if no date was
109 specified, shall constitute a withdrawal of the appeal.

110 (6) (a) At any hearing before the Board of Tax Appeals on
111 an appeal of an order of the Board of Review affirming a tax
112 assessment, refund claim denial, denial of waiver of a tag
113 penalty, or the denial of a claim to tax credits or incentives,
114 two (2) members of the Board of Tax Appeals shall constitute a
115 quorum. At the hearing, the Board of Tax Appeals shall conduct a
116 hearing on all factual and legal issues raised by the taxpayer
117 which address the substantive or procedural propriety of the
118 actions of the Department of Revenue being appealed, according to
119 the law and the facts and pursuant to any procedural guidelines
120 established by regulation.

121 (b) At a hearing of any action brought under this
122 section, the Board of Tax Appeals shall give no deference to the
123 decision of the Board of Review, but shall give deference to the
124 department's interpretation and application of the statutes as
125 reflected in duly enacted regulations and other officially adopted
126 publications. The Board of Tax Appeals shall conduct a hearing on
127 all factual and legal issues raised by the taxpayer which address
128 the substantive or procedural propriety of the actions being
129 appealed. The Board of Tax Appeals shall decide all factual and

130 legal questions presented, including those as to legality and the
131 amount of tax or refund due as well as whether and to what extent
132 the imposition of interest and/or penalties is warranted under the
133 facts of the case, and if it finds that the tax assessment, denial
134 of refund claim or other action of the agency in issue is
135 incorrect or invalid, in whole or in part, it shall determine the
136 amount of tax or refund due, including interest and, if
137 applicable, penalty to date, and enter such order or judgment as
138 it deems proper. Interest and penalty included in this
139 determination shall be computed by the Board of Tax Appeals based
140 on the methods for computing penalty and interest as specified by
141 law for the type of tax in issue, and the Board of Tax Appeals
142 shall have the same discretion as the commissioner in determining
143 whether and to what extent such amounts are warranted under the
144 facts of the case. The rules of evidence shall be relaxed at the
145 hearing.

146 (c) Any appeal to chancery court from an order of the
147 Board of Tax Appeals resulting from this type of hearing shall
148 include a full evidentiary judicial hearing on all factual and
149 legal issues raised by the taxpayer which address the substantive
150 or procedural propriety of the department's action being appealed.
151 No official transcript shall be made of this hearing before the
152 Board of Tax Appeals.

153 (d) After reaching a decision on the issues presented,
154 the Board of Tax Appeals shall enter its order setting forth its
155 findings and decision on the appeal. A copy of the order of the

156 Board of Tax Appeals shall be mailed to the taxpayer and the
157 agency. If the order involves an appeal of a denial of a waiver
158 of tag penalty, a copy of the order shall also be mailed to the
159 tax collector that imposed the penalty.

160 (e) If the Board of Tax Appeals shall not issue an
161 order within nine (9) months of a hearing, the taxpayer may treat
162 the failure to issue an order as a denial of the relief requested
163 in the hearing and appeal such deemed denial to the chancery court
164 as provided in Section 27-77-7. A taxpayer's filing or failure to
165 file an appeal based on this deemed denial shall not prejudice or
166 otherwise jeopardize the taxpayer's right to file an appeal with
167 the chancery court upon the Board of Tax Appeals' issuance of a
168 subsequent order in the manner provided for in Section 27-77-7.

169 (7) If in its order the Board of Tax Appeals orders a
170 taxpayer to pay a tax assessment, the taxpayer shall, within sixty
171 (60) days from the date the Board of Tax Appeals mailed the order,
172 pay the amount ordered to be paid or properly appeal the order of
173 the Board of Tax Appeals to chancery court as provided in Section
174 27-77-7. During the sixty (60) days after the date the Board of
175 Tax Appeals mailed the order, if the taxpayer provides additional
176 documentation or information, the commissioner may further reduce
177 the amount due by the taxpayer. The commissioner shall have
178 thirty (30) days to issue a determination, during which the
179 sixty-day appeal period provided in Section 27-77-7 is tolled. If
180 the commissioner issues a determination in less than thirty (30)
181 days, the appeal period shall begin to run again at the time of

182 the written notice of the commissioner's determination. Written
183 notice by the commissioner shall indicate that the sixty-day
184 appeal period has begun to run again as of the date of the notice,
185 and shall provide the taxpayer the date on which the appeal period
186 will expire. After the sixty-day period, if the tax determined by
187 the Board of Tax Appeals or the reduced amount determined by the
188 commissioner to be due is not paid and an appeal from the Board of
189 Tax Appeals order has not been properly filed, the agency shall
190 proceed to collect the tax assessment as affirmed by the Board of
191 Tax Appeals or reduced by the commissioner. If in its order the
192 Board of Tax Appeals determines that the taxpayer has overpaid his
193 taxes and an appeal from the Board of Tax Appeals order has not
194 been properly filed in chancery court, the agency shall, within
195 sixty (60) days from the date the Board of Tax Appeals mailed its
196 order, refund or credit to the taxpayer, as provided by law, the
197 amount of overpayment as determined and set out in the order.

198 (8) At any time after the filing of an appeal to the Board
199 of Review or from the Board of Review to the Board of Tax Appeals
200 under this section, an appeal can be withdrawn. Such a withdrawal
201 of an appeal may be made voluntarily by the taxpayer or may occur
202 involuntarily as a result of the taxpayer failing to appear at a
203 scheduled hearing, failing to make a written submission or
204 electronic transmission in lieu of attendance at a hearing by the
205 date specified or by the hearing date, if no date was specified,
206 or by any other act or failure that the Board of Review or the
207 Board of Tax Appeals determines represents a failure on the part

208 of the taxpayer to prosecute his appeal. Any voluntary withdrawal
209 shall be in writing or by electronic transmission and sent by the
210 taxpayer or his designated representative to the chairman of the
211 Board of Review, if the appeal being withdrawn is to the Board of
212 Review, or to the executive director, if the appeal being
213 withdrawn is to the Board of Tax Appeals. If the withdrawal of
214 appeal is involuntary, the administrative appeal body from whom
215 the appeal is being withdrawn shall note on its minutes the
216 involuntary withdrawal of the appeal and the basis for the
217 withdrawal. Once an appeal is withdrawn, whether voluntary or
218 involuntary, the action from which the appeal was taken, whether a
219 tax assessment, a denial of refund claim, a denial of waiver of
220 tax penalty, or the denial of a claim to tax credits or
221 incentives, or an order of the Board of Review, shall become final
222 and not subject to further review by the Board of Review, the
223 Board of Tax Appeals or a court, other than as to the issue of
224 whether a taxpayer's actions or inactions constituted a failure on
225 the part of the taxpayer to prosecute his appeal. The agency
226 shall then proceed in accordance with law based on such final
227 action.

228 (9) Nothing in this section shall bar a taxpayer from timely
229 applying to the commissioner as otherwise provided by law for a
230 tax refund or for a revision in tax.

231 (10) Any appeal or other filing with the Board of Review or
232 Board of Tax Appeals pursuant to this section shall be considered
233 timely if it is hand delivered during the regular office hours of

234 the recipient by the due date of such filing, or if it is mailed,
235 postmarked or shipped by such due date. Any appeal or other
236 filing to the Board of Review or Board of Tax Appeals pursuant to
237 this section shall also be considered timely if electronically
238 transmitted via electronic mail, electronic filing or facsimile by
239 midnight of the due date for such filing. The timeliness of such
240 electronic filing shall be determined in all instances based on
241 the local time zone of the recipient. If the due date for any
242 appeal or other filing with the Board of Review or Board of Tax
243 Appeals should fall on a Saturday, Sunday, official state holiday,
244 or other day on which the Department of Revenue or Board of Tax
245 Appeals is closed, the due date for the filing shall be the next
246 business day in which the Department of Revenue or Board of Tax
247 Appeals is open.

248 **SECTION 2.** This act shall take effect and be in force from
249 and after July 1, 2020.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 27-77-5, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE THE COMMISSIONER OF REVENUE TO REDUCE A TAX LIABILITY
3 BASED ON ADDITIONAL INFORMATION OR DOCUMENTATION PROVIDED BY A
4 TAXPAYER AFTER THE BOARD OF TAX APPEALS HAS ISSUED AN ORDER; TO
5 PROVIDE THAT THE COMMISSIONER SHALL HAVE 30 DAYS TO ISSUE A
6 DETERMINATION, DURING WHICH THE 60-DAY PERIOD FOR APPEAL TO THE
7 CHANCERY COURT SHALL BE TOLLED; AND FOR RELATED PURPOSES.

SS26\HB861A.J

Eugene S. Clarke
Secretary of the Senate