

By: Representatives Creekmore IV, Foster

To: Ways and Means

HOUSE BILL NO. 1638  
(As Sent to Governor)

1 AN ACT TO PROVIDE PROCEDURES FOR THE MISSISSIPPI DEPARTMENT  
2 OF REVENUE TO SET OFF A TAXPAYER'S DEBT OWED TO THE MISSISSIPPI  
3 DEPARTMENT OF HUMAN SERVICES AGAINST THE TAXPAYER'S INCOME TAX  
4 REFUND; TO PROVIDE A PROCEDURE FOR THE TAXPAYER TO REQUEST A  
5 HEARING BEFORE THE DEPARTMENT OF HUMAN SERVICES TO CONTEST THE  
6 SETOFF, AND FOR THE TAXPAYER TO APPEAL THE DETERMINATION OF THE  
7 DEPARTMENT OF HUMAN SERVICES TO THE CIRCUIT COURT; TO AUTHORIZE  
8 THE DEPARTMENT OF REVENUE TO PROVIDE TO THE DEPARTMENT OF HUMAN  
9 SERVICES ALL INFORMATION NECESSARY TO ACCOMPLISH AND EFFECTUATE  
10 THE INTENT OF THIS ACT; TO PROVIDE FOR THE CONTINUED  
11 CONFIDENTIALITY OF SUCH INFORMATION; TO AMEND SECTION 27-7-83,  
12 MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** (1) For the purposes of this section, the  
15 following terms shall have the meanings ascribed by this section  
16 unless another meaning is plainly indicated:

17 (a) "Claimant agency" means the Mississippi Department  
18 of Human Services.

19 (b) "Debtor" means any individual, corporation or  
20 partnership owing money or having a delinquent account with the  
21 claimant agency, which obligation has not been adjudicated  
22 satisfied by court order, set aside by court order or discharged  
23 in bankruptcy.



24 (c) "Debt" means any sum due and owing the claimant  
25 agency for any overpayment under the Supplemental Nutrition  
26 Assistance Program, the Temporary Assistance to Needy Families  
27 Program and the Child Care and Development Fund Program.

28 (d) "Refund" means the Mississippi income tax refund  
29 which the department determines to be due any individual taxpayer,  
30 corporation or partnership.

31 (2) The collection remedy authorized by this section is in  
32 addition to and is not substitution for any other remedy available  
33 by law.

34 (3) (a) The claimant agency may submit debts in excess of  
35 One Hundred Twenty-five Dollars (\$125.00) owed to it to the  
36 department for collection through setoff, under the procedure  
37 established by this section, except in cases where the validity of  
38 the debt is legitimately in dispute, an alternate means of  
39 collection is pending and believed to be adequate, or such  
40 collection would result in a loss of federal funds or federal  
41 assistance.

42 (b) Upon the request of the claimant agency, the  
43 department shall set off any refund against the sum certified by  
44 the claimant agency as provided in this section.

45 (4) (a) Within the time frame specified by the department,  
46 the claimant agency seeking to collect a debt through setoff shall  
47 supply the information necessary to identify each debtor whose



48 refund is sought to be set off and certify the amount of debt owed  
49 by each such debtor.

50 (b) (i) If a debtor identified by the claimant agency  
51 is determined by the department to be entitled to a refund of at  
52 least Twenty-five Dollars (\$25.00), the department shall transfer  
53 an amount equal to the refund owed, not to exceed the amount of  
54 the claimed debt certified, to the claimant agency. The  
55 department shall send the excess amount to the debtor within a  
56 reasonable time after such excess is determined.

57 (ii) At the time of the transfer of funds to the  
58 claimant agency under this paragraph (b), the department shall  
59 notify the taxpayer or taxpayers whose refund is sought to be set  
60 off that the transfer has been made. Such notice shall clearly  
61 set forth the name of the debtor, the manner in which the debt  
62 arose, the amount of the claimed debt, the transfer of funds to  
63 the claimant agency pursuant to this paragraph (b) and the  
64 intention to set off the refund against the debt, the amount of  
65 the refund in excess of the claimed debt, the taxpayer's  
66 opportunity to give written notice to contest the setoff within  
67 thirty (30) days of the date of mailing of the notice, the name  
68 and mailing address of the claimant agency to which the  
69 application for such a hearing must be sent, and the fact that the  
70 failure to apply for such a hearing, in writing, within the  
71 thirty-day period will be deemed a waiver of the opportunity to  
72 contest the setoff. In the case of a joint return or a joint



73 refund, the notice shall also state the name of the taxpayer named  
74 in the return, if any, against whom no debt is claimed, the fact  
75 that a debt is not claimed against such taxpayer, the fact that  
76 such taxpayer is entitled to receive a refund if it is due him or  
77 her regardless of the debt asserted against his or her spouse, and  
78 that, in order to obtain a refund due him or her, such taxpayer  
79 must apply in writing for a hearing with the claimant agency named  
80 in the notice within thirty (30) days of the date of the mailing  
81 of the notice. The failure of a taxpayer to apply in writing for  
82 a hearing within such time will constitute waiver of the  
83 opportunity to contest the setoff.

84 (c) The claimant agency shall pay the department a fee,  
85 not to exceed Seventeen Dollars (\$17.00), in each case in which a  
86 tax refund is identified as being available for setoff by the  
87 department. Such fee shall be deposited by the department into a  
88 special fund hereby created in the State Treasury, out of which  
89 the Legislature shall appropriate monies to defray expenses of the  
90 department in employing personnel to administer the provisions of  
91 this section.

92 (5) (a) When the claimant agency receives a protest or an  
93 application in writing from a taxpayer within thirty (30) days of  
94 the notice issued by the department, the claimant agency shall set  
95 a date to hear the protest and give notice to the taxpayer through  
96 the United States Postal Service or electronic digital transfer of  
97 the date so set. The time and place of such hearing shall be



98 designated in such notice, and the date set shall be not less than  
99 fifteen (15) days from the date of such notice. If, at the  
100 hearing, the sum asserted as due and owing is found not to be  
101 correct, an adjustment to the claim may be made. The claimant  
102 agency shall give notice to the debtor of its final determination  
103 as provided in paragraph (c) of this subsection.

104 (b) No issues shall be reconsidered at the hearing  
105 which have been previously litigated.

106 (c) If any debtor is dissatisfied with the final  
107 determination made at the hearing by the claimant agency, he or  
108 she may appeal the final determination to the circuit court of the  
109 county in which the main office of the claimant agency is located  
110 by filing notice of appeal, within thirty (30) days of the date  
111 the notice of final determination was given by the claimant  
112 agency, with the administrative head of the claimant agency and  
113 with the clerk of the circuit court of the county in which the  
114 appeal shall be taken.

115 (6) Upon final determination of the amount of the debt due  
116 and owing by means of hearing or by the taxpayer's default through  
117 failure to submit a timely request for review, the claimant agency  
118 shall irreversibly recoup the amount of the debt due and owing and  
119 shall credit such amount to the debtor's obligation.

120 (7) (a) Pursuant to Section 27-7-83, the department may  
121 provide to a claimant agency all information necessary to  
122 accomplish and effectuate the intent of this section.



123           (b) The information obtained by the claimant agency  
124 from the department in accordance with the provisions of this  
125 section shall retain its confidentiality and shall only be used by  
126 the claimant agency in the pursuit of its debt collection duties  
127 and practices. Any employee or prior employee of the claimant  
128 agency who unlawfully discloses any such information for any other  
129 purpose, except as specifically authorized by law, shall be  
130 subject to the same penalties specified by law for unauthorized  
131 confidential information by an agent or employee of the  
132 department.

133           **SECTION 2.** Section 27-7-83, Mississippi Code of 1972, is  
134 amended as follows:

135           27-7-83. (1) Returns and return information filed or  
136 furnished under the provisions of this chapter shall be  
137 confidential, and except in accordance with proper judicial order,  
138 as otherwise authorized by this section, as authorized in Section  
139 27-4-3 or as authorized under Section 27-7-821, it shall be  
140 unlawful for the Commissioner of Revenue or any deputy, agent,  
141 clerk or other officer or employee of the Department of Revenue or  
142 the Mississippi Department of Information Technology Services, or  
143 any former employee thereof, to divulge or make known in any  
144 manner the amount of income or any particulars set forth or  
145 disclosed in any report or return required. The provisions of  
146 this section shall apply fully to any federal return, a copy of  
147 any portion of a federal return, or any information reflected on a



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

164 (2) Returns and return information with respect to taxes  
165 imposed by this chapter shall be open to inspection by or  
166 disclosure to the Commissioner of the Internal Revenue Service of  
167 the United States, or the proper officer of any state imposing an  
168 income tax similar to that imposed by this chapter, or the  
169 authorized representatives of such agencies. Such inspection  
170 shall be permitted, or such disclosure made, only upon written  
171 request by the head of such agencies, or the district director in  
172 the case of the Internal Revenue Service, and only to the



173 representatives of such agencies designated in a written statement  
174 to the Commissioner of Revenue as the individuals who are to  
175 inspect or to receive the return or return information on behalf  
176 of such agency. The Commissioner of Revenue is authorized to  
177 enter into agreements with the Internal Revenue Service and with  
178 other states for the exchange of returns and return information  
179 data, or the disclosure of returns or return information data to  
180 such agencies, only to the extent that the statutes of the United  
181 States or of such other state, as the case may be, grant  
182 substantially similar privileges to the proper officer of this  
183 state charged with the administration of the tax laws of this  
184 state.

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

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

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

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

195 (iv) In the case of the return of a corporation or  
196 a subsidiary thereof, any person designated by resolution of its  
197 board of directors or other similar governing body, or any officer





198 or employee of such corporation upon written request signed by any  
199 principal officer and attested to by the secretary or other  
200 officer;

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

206 (vi) In the case of the return of a trust, the  
207 trustee or trustees, jointly or separately, and any beneficiary of  
208 such trust, but only to the extent that such beneficiary has a  
209 material interest which will be affected by information contained  
210 therein;

211 (vii) In the case of the return of an individual  
212 or a return filed jointly, any claimant agency or claimant local  
213 government seeking to collect a debt through the setoff procedure  
214 established in Sections 27-7-701 through 27-7-713, Sections  
215 27-7-501 through 27-7-519 \* \* \*, Sections 27-7-801 through  
216 27-7-823, \* \* \* or Section 1 of this act, from an individual with  
217 respect to whom the return is filed.

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



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

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

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

241 (4) The State Auditor and the employees of his office shall  
242 have the right to examine only such tax returns as are necessary  
243 for auditing the Department of Revenue and auditing benefits  
244 administered under the United States Department of Health and  
245 Human Services and the United States Department of Agriculture.  
246 The State Auditor and the employees of his office may make



247 information related to auditing such benefits available to and may  
248 exchange the information with state agencies responsible for the  
249 administration of the benefits. Except as otherwise provided in  
250 this subsection (4), the same prohibitions against disclosure  
251 which apply to the Department of Revenue shall apply to the State  
252 Auditor and his employees or former employees.

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

266 (6) Information required by the University Research Center  
267 to prepare the analyses required by Sections 57-13-101 through  
268 57-13-109 shall be furnished to the University Research Center  
269 upon request. It shall be unlawful for any officer or employee of  
270 the University Research Center to divulge or make known in any  
271 manner the amount of income or any particulars set forth or



272 disclosed in any information received by the center from the  
273 Department of Revenue other than as may be required by Sections  
274 57-13-101 through 57-13-109 in an analysis prepared pursuant to  
275 Sections 57-13-101 through 57-13-109.

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

286 (8) Information necessary to comply with Chapter 13, Title  
287 85, may be furnished to financial institutions. It shall be  
288 unlawful for any officer or employee of the financial institution  
289 to divulge or make known in any manner the amount of income or any  
290 particulars set forth or disclosed in any information received by  
291 the financial institution from the Department of Revenue other  
292 than as may be authorized by Chapter 13, Title 85.

293 (9) The Commissioner of Revenue and the Department of  
294 Revenue are authorized to discuss with and provide the Attorney  
295 General or his designated representative with information related  
296 to an offer to compromise and settle any doubtful claim regarding



297 a finally determined tax liability as authorized by Section  
298 31-19-30. It shall be unlawful for the Attorney General or any  
299 officer or employee of the Attorney General to divulge or make  
300 known in any manner the amount of income or any particulars set  
301 forth or disclosed in any information received by the Attorney  
302 General's office from the Commissioner of Revenue or Department of  
303 Revenue other than as may be required by Section 31-19-30.

304 (10) Nothing in this section shall be construed to prohibit  
305 the publication of statistics, so classified as to prevent the  
306 identification of particular reports or returns and the items  
307 thereof, or the inspection by the Attorney General, or any other  
308 attorney representing the state, of the report or return of any  
309 taxpayer who shall bring action to set aside the tax thereon, or  
310 against whom any action or proceeding has been instituted to  
311 recover any tax or penalty imposed.

312 (11) Nothing in this section shall prohibit the commissioner  
313 from making available information necessary to recover taxes owing  
314 the state pursuant to the authority granted in Section 27-75-16.

315 (12) Reports and returns required under the provisions of  
316 this chapter shall be preserved in accordance with approved  
317 records control schedules. No records, however, may be destroyed  
318 without the approval of the Director of the Department of Archives  
319 and History.

320 (13) The Department of Revenue is authorized to disclose to  
321 the Child Support Unit and to the Fraud Investigation Unit of the



322 Department of Human Services without the need for a subpoena or  
323 proper judicial order the name, address, social security number,  
324 amount of income, source of income, assets and other relevant  
325 information, records and tax forms for individuals who are  
326 delinquent in the payment of any child support as defined in  
327 Section 93-11-101 or who are under investigation for fraud or  
328 abuse of any state or federal program or statute as provided in  
329 Section 43-1-23.

330 (14) Nothing in this section shall prohibit the Department  
331 of Revenue from exchanging information with the federal government  
332 that is necessary to offset income tax refund payment on debts  
333 owed to this state or the United States.

334 (15) Nothing in this section shall prohibit the department  
335 from making available information that is necessary to be  
336 disclosed for the administration and enforcement of Section  
337 27-7-87.

338 **SECTION 3.** Section 1 of this act shall be codified in Title  
339 27, Chapter 7, Mississippi Code of 1972.

340 **SECTION 4.** This act shall take effect and be in force from  
341 and after July 1, 2024.

