

By: Representative Felsher

To: Ways and Means

HOUSE BILL NO. 1698

1 AN ACT TO AUTHORIZE THE DEPARTMENT OF HUMAN SERVICES TO
2 SUBMIT CERTAIN DEBTS OWED TO IT TO THE DEPARTMENT OF REVENUE FOR
3 COLLECTION THROUGH A SETOFF AGAINST A DEBTOR'S MISSISSIPPI INCOME
4 TAX REFUND; TO PROVIDE THE AMOUNT OF THE DEBT AND INCOME TAX
5 REFUNDS TO WHICH THIS ACT APPLIES; TO PROVIDE FOR NOTICE TO A
6 DEBTOR AND AN OPPORTUNITY FOR THE DEBTOR TO CONTEST AND APPEAL THE
7 SETOFF; TO PROVIDE FOR THE DUTIES OF THE DEPARTMENT OF REVENUE
8 UNDER THIS ACT; TO AUTHORIZE THE EXCHANGE OF INFORMATION BETWEEN
9 THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF HUMAN SERVICES
10 CLAIMANT AGENCY THAT IS NECESSARY TO ACCOMPLISH AND EFFECTUATE THE
11 INTENT OF THIS ACT; TO PROVIDE THAT INFORMATION OBTAINED FROM THE
12 DEPARTMENT OF REVENUE SHALL RETAIN ITS CONFIDENTIALITY AND TO
13 PROVIDE PENALTIES FOR THE UNLAWFUL DISCLOSURE OF SUCH INFORMATION;
14 TO AMEND SECTION 27-7-83, MISSISSIPPI CODE OF 1972, IN CONFORMITY
15 THERETO; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** (1) For the purposes of this section, the
18 following terms shall have the meanings ascribed by this section
19 unless the context clearly indicates otherwise:

20 (a) "Claimant agency" means the Mississippi Department
21 of Human Services.

22 (b) "Debtor" means any individual, corporation or
23 partnership owing money or having a delinquent account with the
24 claimant agency, which obligation has not been adjudicated



satisfied by court order, set aside by court order, or discharged in bankruptcy.

(c) "Debt" means any sum due and owing the claimant agency, including costs, court costs, fines, restitution, penalties and interest which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

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

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

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



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

51 (4) (a) Within the time frame specified by the department,
52 the claimant agency seeking to collect a debt through setoff shall
53 supply the information necessary to identify each debtor whose
54 refund is sought to be set off and certify the amount of debt or
55 debts owed by each such debtor.

56 (b) If a debtor identified by the claimant agency is
57 determined by the department to be entitled to a refund of at
58 least Twenty-five Dollars (\$25.00), the department shall transfer
59 an amount equal to the refund owed, not to exceed the amount of
60 the claimed debt certified, to the claimant agency. The
61 department shall send the excess amount to the debtor within a
62 reasonable time after such excess is determined. At the time of
63 the transfer of funds to the claimant agency pursuant to
64 this paragraph (b), the department shall notify the taxpayer or
65 taxpayers whose refund is sought to be set off that the transfer
66 has been made. Such notice shall clearly set forth the name of
67 the debtor, the manner in which the debt arose, the amount of the
68 claimed debt, the transfer of funds to the claimant agency
69 pursuant to this paragraph (b) and the intention to set off the
70 refund against the debt, the amount of the refund in excess of the
71 claimed debt, the taxpayer's opportunity to give written notice to
72 contest the setoff within thirty (30) days of the date of mailing



73 of the notice, the name and mailing address of the claimant agency
74 to which the application for such a hearing must be sent, and the
75 fact that the failure to apply for such a hearing, in writing,
76 within the thirty-day period will be deemed a waiver of the
77 opportunity to contest the setoff. In the case of a joint return
78 or a joint refund, the notice shall also state the name of the
79 taxpayer named in the return, if any, against whom no debt is
80 claimed, the fact that a debt is not claimed against such
81 taxpayer, the fact that such taxpayer is entitled to receive a
82 refund if it is due him or her regardless of the debt asserted
83 against his or her spouse, and that in order to obtain a refund
84 due him or her such taxpayer must apply in writing for a hearing
85 with the claimant agency named in the notice within thirty (30)
86 days of the date of the mailing of the notice. If a taxpayer
87 fails to apply in writing for such a hearing within thirty (30)
88 days of the mailing of such notice, he or she will have waived his
89 or her opportunity to contest the setoff.

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



97 (5) (a) When the claimant agency receives a protest or an
98 application in writing from a taxpayer within thirty (30) days of
99 the notice issued by the department, the claimant agency shall set
100 a date to hear the protest and give notice to the taxpayer through
101 the United States Postal Service or electronic digital transfer of
102 the date so set. The time and place of such hearing shall be
103 designated in such notice and the date set shall not be less than
104 fifteen (15) days from the date of such notice. If, at the
105 hearing, the sum asserted as due and owing is found not to be
106 correct, an adjustment to the claim may be made. The claimant
107 agency shall give notice to the debtor of its final determination
108 as provided in paragraph (c) of this subsection.

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

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

120 (6) Upon final determination of the amount of the debt due
121 and owing by means of hearing or by the taxpayer's default through



failure to comply with timely request for review, the claimant agency shall finally recoup the amount of the debt due and owing and credit such amount to the debtor's obligation.

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

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

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

27-7-83. (1) Returns and return information filed or furnished under the provisions of this chapter shall be confidential, and except in accordance with proper judicial order, as otherwise authorized by this section, as authorized in Section 27-4-3 * * *, as authorized under Section 27-7-821 or as authorized in Section 1 of this act, it shall be unlawful for the Commissioner of Revenue or any deputy, agent, clerk or other



147 officer or employee of the Department of Revenue or the
148 Mississippi Department of Information Technology Services, or any
149 former employee thereof, to divulge or make known in any manner
150 the amount of income or any particulars set forth or disclosed in
151 any report or return required. The provisions of this section
152 shall apply fully to any federal return, a copy of any portion of
153 a federal return, or any information reflected on a federal return
154 which is attached to or made a part of the state tax return.
155 Likewise, the provisions of this section shall apply to any
156 federal return or portion thereof, or to any federal return
157 information data which is acquired from the Internal Revenue
158 Service for state tax administration purposes pursuant to the
159 Federal-State Exchange Program cited at Section 6103, Federal
160 Internal Revenue Code. The term "proper judicial order" as used
161 in this section shall not include subpoenas or subpoenas duces
162 tecum, but shall include only those orders entered by a court of
163 record in this state after furnishing notice and a hearing to the
164 taxpayer and the Department of Revenue. The court shall not
165 authorize the furnishing of such information unless it is
166 satisfied that the information is needed to pursue pending
167 litigation wherein the return itself is in issue, or the judge is
168 satisfied that the need for furnishing the information outweighs
169 the rights of the taxpayer to have such information secreted.

170 (2) Returns and return information with respect to taxes
171 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;



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

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

201 (iv) In the case of the return of a corporation or
202 a subsidiary thereof, any person designated by resolution of its
203 board of directors or other similar governing body, or any officer
204 or employee of such corporation upon written request signed by any
205 principal officer and attested to by the secretary or other
206 officer;

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

212 (vi) In the case of the return of a trust, the
213 trustee or trustees, jointly or separately, and any beneficiary of
214 such trust, but only to the extent that such beneficiary has a
215 material interest which will be affected by information contained
216 therein;

217 (vii) In the case of the return of an individual
218 or a return filed jointly, any claimant agency or claimant local
219 government seeking to collect a debt through the setoff procedure



established in Sections 27-7-701 through 27-7-713, Sections 27-7-501 through 27-7-519 * * *, Sections 27-7-801 through 27-7-823 and/or Section 1 of this act, as the case may be, from an individual with respect to whom the return is filed.

(b) If an individual described in paragraph (a) is 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



270 apply to the Department of Revenue shall apply to the officers or
271 employees of the Mississippi Development Authority.

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

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

292 (8) Information necessary to comply with Chapter 13, Title
293 85, may be furnished to financial institutions. It shall be
294 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) The Commissioner of Revenue and the Department of Revenue are authorized to discuss with and provide the Attorney General or his designated representative with information related to an offer to compromise and settle any doubtful claim regarding a finally determined tax liability as authorized by Section 31-19-30. It shall be unlawful for the Attorney General or any officer or employee of the Attorney General 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 Attorney General's office from the Commissioner of Revenue or Department of Revenue other than as may be required by Section 31-19-30.

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



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

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

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

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

(15) Nothing in this section shall prohibit the department from making available information that is necessary to be



342 disclosed for the administration and enforcement of Section
343 27-7-87.

344 **SECTION 3.** Section 1 of this act shall be codified as a new
345 section in Chapter 7, Title 27, Mississippi Code of 1972.

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

