

By: Senator(s) Fillingane

To: Finance

SENATE BILL NO. 2304

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, including costs, court costs, fines, restitution,
26 penalties and interest which have accrued through contract,
27 subrogation, tort, operation of law or any other legal theory
28 regardless of whether there is an outstanding judgment for that
29 sum which is legally collectible and for which a collection effort
30 has been or is being made.

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

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

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

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



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

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

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



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

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

95 (5) (a) When the claimant agency receives a protest or an
96 application in writing from a taxpayer within thirty (30) days of
97 the notice issued by the department, the claimant agency shall set



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

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

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

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



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

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

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

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



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

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



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

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

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

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

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



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

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

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

214 (vii) In the case of the return of an individual
215 or a return filed jointly, any claimant agency or claimant local
216 government seeking to collect a debt through the setoff procedure
217 established in Sections 27-7-701 through 27-7-713, Sections
218 27-7-501 through 27-7-519 * * *, Sections 27-7-801 through
219 27-7-823, * * * or Section 1 of this act, from an individual with
220 respect to whom the return is filed.

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



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

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

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

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

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



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

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

269 (6) Information required by the University Research Center
270 to prepare the analyses required by Sections 57-13-101 through
271 57-13-109 shall be furnished to the University Research Center
272 upon request. It shall be unlawful for any officer or employee of



273 the University Research Center to divulge or make known in any
274 manner the amount of income or any particulars set forth or
275 disclosed in any information received by the center from the
276 Department of Revenue other than as may be required by Sections
277 57-13-101 through 57-13-109 in an analysis prepared pursuant to
278 Sections 57-13-101 through 57-13-109.

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

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

296 (9) The Commissioner of Revenue and the Department of
297 Revenue are authorized to discuss with and provide the Attorney



298 General or his designated representative with information related
299 to an offer to compromise and settle any doubtful claim regarding
300 a finally determined tax liability as authorized by Section
301 31-19-30. It shall be unlawful for the Attorney General or any
302 officer or employee of the Attorney General to divulge or make
303 known in any manner the amount of income or any particulars set
304 forth or disclosed in any information received by the Attorney
305 General's office from the Commissioner of Revenue or Department of
306 Revenue other than as may be required by Section 31-19-30.

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

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

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



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

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

337 (15) Nothing in this section shall prohibit the department
338 from making available information that is necessary to be
339 disclosed for the administration and enforcement of Section
340 27-7-87.

341 **SECTION 3.** Section 1 of this act shall be codified in Title
342 27, Chapter 7, Mississippi Code of 1972.

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

