

By: Senator(s) Fillingane

To: Finance

COMMITTEE SUBSTITUTE
FOR
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 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.

