

By: Senator(s) Minor, Carlton

To: Finance

SENATE BILL NO. 2895

1 AN ACT TO AMEND SECTIONS 27-7-51 AND 27-7-53, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE THAT IF A TAXPAYER MAKES AN UNDERPAYMENT
3 INCOME TAX, FAILS TO FILE AN INCOME TAX RETURN OR FAILS TO PAY
4 INCOME TAX, THE ASSESSMENT OF INTEREST AND PENALTIES AGAINST THE
5 TAXPAYER FOR SUCH UNDERPAYMENT OR FAILURE SHALL BE DISCRETIONARY
6 RATHER THAN MANDATORY; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 27-7-51, Mississippi Code of 1972, is
9 amended as follows:

10 27-7-51. (1) If, upon examination of a return made under
11 the provisions of this article, it appears that the correct amount
12 of tax is greater or less than that shown in the return, the tax
13 shall be recomputed. Any overpayment of tax so determined shall
14 be credited or refunded to the taxpayer. If the correct amount of
15 tax is greater than that shown in the return of the taxpayer, the
16 commissioner shall make his assessment of additional tax due by
17 certified mail or by personal delivery of the assessment to the
18 taxpayer, which assessment shall constitute notice and demand for
19 payment. The taxpayer shall be given a period of thirty (30) days
20 after receipt of notice in which to pay the additional tax due,
21 including penalty and interest as hereinafter provided, and if
22 said sum is not paid within the period of thirty (30) days, the
23 commissioner shall proceed to collect same under the provisions of
24 Sections 27-7-55 to 27-7-67, provided that within said period of
25 thirty (30) days the taxpayer may appeal as set out in Sections
26 27-7-71 and 27-7-73.

27 (2) In the case of an overpayment of tax, interest shall be
28 computed under the provisions of Section 27-7-315. In the case of
29 an underpayment of tax, interest at the rate of one percent (1%)



30 per month from the due date of the return may be added or assessed
31 in addition to the additional tax due as hereinabove provided in
32 subsection (1).

33 (3) In case of failure to pay any additional taxes as
34 assessed under this section, unless it is shown that such failure
35 is due to reasonable cause and not due to willful neglect, there
36 may be added to the additional amount assessed a penalty of
37 one-half of one percent ($1/2$ of 1%) of the amount of the
38 additional tax if the failure is for not more than one (1) month,
39 with an additional one-half of one percent ($1/2$ of 1%) for each
40 additional month or fraction thereof during which the failure
41 continues, not to exceed twenty-five percent (25%) in the
42 aggregate.

43 (4) Where the reported net income of a taxpayer is increased
44 by the Internal Revenue Service, a taxpayer who, without action by
45 the commissioner, amends a return filed under this article on the
46 basis of a change in taxable income made by the Internal Revenue
47 Service, and pays the additional tax due thereon within thirty
48 (30) days after agreeing to the federal change (and has received
49 statement of the federal changes to which agreement has been made
50 or payment thereof), shall add interest to the additional tax at
51 the rate of one percent (1%) per month from due date of the
52 original return. If the additional tax, based on changes in
53 taxable income by the Internal Revenue Service, is assessed by the
54 commissioner under subsection (1) of this section, in addition to
55 the interest there may be added a penalty of one-half of one
56 percent ($1/2$ of 1%) of the additional tax due if the failure is
57 for not more than one (1) month, with an additional one-half of
58 one percent ($1/2$ of 1%) for each additional month or fraction
59 thereof during which the failure to pay continues, not to exceed
60 twenty-five percent (25%) in the aggregate, unless it is shown
61 that the failure is due to reasonable cause and not due to willful
62 neglect.



63 (5) In the case of a taxpayer who files a bond as provided
64 by Section 27-13-45 in lieu of payment of the additional tax found
65 to be due by the State Tax Commission, and such tax assessment or
66 a part thereof is upheld by the chancery court and/or the Supreme
67 Court, such assessment shall bear interest at the rate of one
68 percent (1%) per month from the due date until paid.

69 Nothing in this section shall be construed as authorizing a
70 refund of taxes for claims pursuant to the United States Supreme
71 Court decision of *Davis v. Michigan Department of Treasury*, 109
72 S.Ct. 1500 (1989). These taxes were not incorrectly and/or
73 erroneously collected as contemplated by this chapter.

74 In the event a court of final jurisdiction determines the
75 above provision to be void for any reason, it is hereby declared
76 the intent of the Legislature that affected taxpayers shall be
77 allowed a credit against future income tax liability as opposed to
78 a tax refund.

79 **SECTION 2.** Section 27-7-53, Mississippi Code of 1972, is
80 amended as follows:

81 27-7-53. (1) If a return is timely filed by the taxpayer
82 but the tax due is not paid, the commissioner shall make his
83 assessment of tax due by mail or by personal delivery of the
84 assessment to the taxpayer, which assessment shall constitute
85 notice and demand for payment. The taxpayer shall be given a
86 period of thirty (30) days from the date of the notice in which to
87 pay the tax due, including penalty and interest as hereinafter
88 provided, and if said sum is not paid within the period of thirty
89 (30) days, the commissioner shall proceed to collect same under
90 the provisions of Sections 27-7-55 to 27-7-67 of this article;
91 provided that within said period of thirty (30) days the taxpayer
92 may appeal as set out in Sections 27-7-71 and 27-7-73.

93 (2) If no return is made by a taxpayer required by this
94 chapter to make a return, the commissioner shall determine the
95 taxpayer's liability from the best information available, which



96 determination shall be prima facie correct for the purpose of this
97 article, and the commissioner shall forthwith make an assessment
98 of the tax so determined to be due by mail or by personal delivery
99 of the assessment to the taxpayer, which assessment shall
100 constitute notice and demand for payment. The taxpayer shall be
101 given a period of thirty (30) days from the date of the notice in
102 which to pay the tax due, including penalty and interest as
103 hereinafter provided, and if said sum is not paid within the
104 period of thirty (30) days, the commissioner shall proceed to
105 collect same under the provisions of Sections 27-7-55 to 27-7-67
106 of this article; provided that within said period of thirty (30)
107 days the taxpayer may appeal as set out in Sections 27-7-71 and
108 27-7-73.

109 (3) Interest at the rate of one percent (1%) per month from
110 the due date of the return may be added or assessed in addition to
111 the tax due as hereinabove provided in subsections (1) and (2).

112 (4) In case of failure to file a return as required by this
113 chapter, unless it can be shown that the failure is due to
114 reasonable cause and not due to willful neglect, there may be
115 added to the amount required to be shown as tax on the return a
116 penalty of five percent (5%) of the amount of the tax if the
117 failure is for not more than one (1) month, with an additional
118 five percent (5%) for each additional month or fraction thereof
119 during which the failure continues, not to exceed twenty-five
120 percent (25%) in the aggregate. Such failure to file a return
121 penalty shall not be less than One Hundred Dollars (\$100.00).

122 (5) In case of failure to pay the amount shown as tax on any
123 return specified in subsections (1) and (2) of this section on or
124 before the date prescribed for payment of the tax, determined with
125 regard to any extension of time for payment, unless it is shown
126 that the failure is due to reasonable cause and not due to willful
127 neglect, there may be added to the amount shown as tax on the
128 return one-half of one percent (1/2 of 1%) of the amount of the



129 tax if the failure is for not more than one (1) month, with an
130 additional one-half of one percent (1/2 of 1%) for each additional
131 month or fraction thereof during which the failure continues, not
132 to exceed twenty-five percent (25%) in the aggregate.

133 **SECTION 3.** This act shall take effect and be in force from
134 and after its passage.

