

By: Representative Chism

To: Ways and Means

HOUSE BILL NO. 347

1 AN ACT TO CREATE THE "SETOFF DEBT COLLECTION ACT FOR STATE
2 AGENCIES AND LOCAL GOVERNING AUTHORITIES"; TO PROVIDE THAT THE
3 STATE TAX COMMISSION SHALL GIVE NOTICE TO A TAXPAYER WHOSE TAX
4 REFUND IS TO BE SETOFF; TO REQUIRE THE CLAIMANT AGENCY TO PROVIDE
5 A HEARING IF A TAXPAYER CONTESTS THE SETOFF; TO PROVIDE THE
6 PROCEDURE TO SETOFF A TAXPAYER'S DEBT WHEN THE AMOUNT OF THE DEBT
7 IS DETERMINED; TO AUTHORIZE THE STATE TAX COMMISSION TO ADOPT
8 RULES AND REGULATIONS TO CARRY OUT THIS ACT; TO AUTHORIZE THE
9 STATE TAX COMMISSION TO ENTER INTO RECIPROCAL AGREEMENTS WITH
10 OTHER STATES THAT HAVE SUBSTANTIALLY THE SAME LAWS FOR SETOFF OF A
11 TAXPAYER'S REFUND; TO REQUIRE THAT ALL INFORMATION OBTAINED FROM A
12 CLAIMANT AGENCY SHALL BE CONFIDENTIAL AND ONLY USED BY THE
13 CLAIMANT AGENCY; TO PROVIDE THAT CLAIMANT AGENCIES THAT UNLAWFULLY
14 DISCLOSE INFORMATION SHALL BE SUBJECT TO PENALTIES SPECIFIED BY
15 LAW; TO PROVIDE THE PRIORITY IN WHICH MULTIPLE CLAIMS MAY BE PAID;
16 AND FOR RELATED PURPOSES.

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

18 **SECTION 1.** This act may be cited as the "Setoff Debt
19 Collection Act for State Agencies and Local Governing
20 Authorities."

21 **SECTION 2.** As used in this act, unless the context requires
22 otherwise:

23 (a) "Claimant agency" means a state agency, board,
24 committee, commission, political subdivision, or any other
25 governmental or quasi governmental entity. A political
26 subdivision that submits a claim through an association is a
27 claimant agency for the purpose of the notice and appeal
28 provisions of this act.

29 (b) "Commission" means the State Tax Commission of the
30 State of Mississippi.

31 (c) "Debtor" means any individual owing overdue support
32 for a child as defined by federal regulations.

33 (d) "Debt" means any sum due and owing any claimant
34 agency, including collection costs, court costs, fines, penalties,

35 and interest which have accrued through contract, subrogation,
36 tort, operation of law, or any other legal theory regardless of
37 whether there is an outstanding judgment for that sum which is
38 legally collectible and for which a collection effort has been or
39 is being made. It also includes any fine, penalty, cost, fee,
40 assessment, surcharge, service charge, restitution, or other
41 amount imposed by a court or as a direct consequence of a final
42 court order which is received by or payable to the clerk of the
43 appropriate court or treasurer of the entity in which the court is
44 located.

45 (e) "Refund" means the Mississippi income tax refund
46 which the commission determines to be due any individual taxpayer.

47 **SECTION 3.** The collection remedy authorized by this act is
48 in addition to and not in substitution for any other remedy
49 available by law.

50 **SECTION 4.** (1) The claimant agency may submit any debts in
51 excess of Twenty-five Dollars (\$25.00) to the commission for
52 collection through setoff under the procedure established by this
53 act, except in cases where the validity of the debt is
54 legitimately in dispute and alternate means of collection would
55 result in a loss of federal funds or federal assistance.

56 (2) Upon request of the claimant agency, the commission
57 shall set off any refund against the sum certified by the claimant
58 agency as provided in this act.

59 (3) If the claimant agency determines that the
60 administrative cost of utilizing this act is prohibitive, it may
61 choose not to participate in the setoff program, or it may choose
62 to participate only in cases of debt above an amount it determines
63 is appropriate.

64 **SECTION 5.** (1) Within the time frame specified by the
65 commission, a claimant agency seeking to collect a debt through
66 setoff shall supply the information necessary to identify each

67 debtor whose refund is sought to be set off and certify the amount
68 of the debt or debts owed by each such debtor.

69 (2) If a debtor identified by a claimant agency is
70 determined by the commission to be entitled to a refund of at
71 least Twenty-five Dollars (\$25.00), the commission shall transfer
72 an amount equal to the refund owed, not to exceed the amount of
73 the claimed debt certified, to the agency. When the refund owed
74 exceeds the claimed debt, the commission shall send the excess
75 amount to the debtor within a reasonable time after such excess is
76 determined.

77 (3) At the time of the transfer of funds to a claimant
78 agency pursuant to subsection (2) of this section, the commission
79 shall notify the taxpayer or taxpayers whose refund is sought to
80 be set off that the transfer has been made. Such notice shall
81 clearly set forth the name of the debtor, the manner in which the
82 debt arose, the amount of the claimed debt, the transfer of funds
83 to the claimant agency pursuant to subsection (2) of this section,
84 the intention to set off the refund against the debt, the amount
85 of the refund in excess of the claimed debt, the taxpayer's
86 opportunity to give written notice to contest the setoff within
87 thirty (30) days of the date of the mailing of the notice, the
88 name and mailing address of the claimant agency to which the
89 application for a hearing must be sent, and the fact that failure
90 to apply in writing for such a hearing within the thirty-day
91 period will be deemed a waiver of the opportunity to contest the
92 setoff. In the case of a joint return, the notice shall also
93 state the name of the taxpayer named in the return, if any,
94 against whom no debt is claimed, the fact that a debt is not
95 claimed against such taxpayer, the fact that such taxpayer is
96 entitled to receive a refund if it is due him regardless of the
97 debt asserted against his spouse, and that in order to obtain a
98 refund due him, such taxpayer must apply in writing for a hearing
99 with the claimant agency named in the notice within thirty (30)

100 days of the date of the mailing of the notice. If a taxpayer
101 fails to apply in writing for such a hearing within thirty (30)
102 days of the mailing date of such notice, he will have waived his
103 opportunity to contest the setoff.

104 (4) Upon receipt of funds transferred from the commission
105 pursuant to subsection (2) of this section, the claimant agency
106 shall deposit and hold such funds in an escrow account until a
107 final determination of the validity of the debt.

108 (5) The claimant agency shall pay the commission a fee, not
109 to exceed Seventeen Dollars (\$17.00) in each case in which a tax
110 refund is identified as being available for offset. Such fees
111 shall be deposited by the commission into a special fund hereby
112 created in the State Treasury, out of which the Legislature shall
113 appropriate monies to defray expenses of the commission in
114 employing personnel to administer the provisions of this article.

115 **SECTION 6.** If the claimant agency receives a written
116 application contesting the setoff or the claim upon which the
117 setoff is based, it shall grant a hearing to the taxpayer to
118 determine whether the setoff is proper or the claim is valid. If
119 the sum asserted as due and owing is not correct, an adjustment to
120 the claimed sum may be made. No issues shall be reconsidered at
121 the hearing which have been previously litigated.

122 **SECTION 7.** (1) Upon determination of the amount of the debt
123 due and owing by means of the hearing provided for in Section 6 of
124 this act or by the taxpayer's default through failure to comply
125 with Section 5(3) of this act which mandates a timely request for
126 review, the claimant agency shall remove the amount of the debt
127 due and owing from the escrow account established pursuant to
128 Section 5(4) of this act and shall credit such amount to the
129 debtor's obligation.

130 (2) Upon transfer of the debt due and owing from the escrow
131 account to the credit of the debtor's obligation, the claimant
132 agency shall notify the debtor in writing of the finalization of

133 the setoff. Such notice shall include a final accounting of the
134 refund which was set off, including the amount of the refund to
135 which the debtor was entitled prior to setoff, the amount of the
136 debt due and owing, the amount of the refund in excess of the debt
137 which has been returned to the debtor by the commission pursuant
138 to Section 5(2) of this act and the amount of the funds
139 transferred to the claimant agency pursuant to Section 5(2) of
140 this act in excess of the debt determined to be due and owing at a
141 hearing held pursuant to Section 6 of this act, if such a hearing
142 was held. At such time, the claimant agency shall refund to the
143 debtor the amount of the claimed debt originally certified and
144 transferred to it by the commission in excess of the amount of the
145 debt finally found to be due and owing.

146 **SECTION 8.** (1) The commission is authorized to prescribe
147 forms and adopt rules and regulations which it deems necessary to
148 effectuate the intent and provisions of this act. All such rules
149 and regulations shall be adopted in accordance with the
150 Mississippi Administrative Procedures Law (Section 25-43-1 et
151 seq.).

152 (2) The commission may enter into reciprocal agreements with
153 the departments of revenue of other states that have enacted
154 legislation that is substantially equivalent to the setoff
155 procedure in this act. The agreement shall authorize the
156 commission to provide by rule for the setoff of state income tax
157 refunds or rebates of defaulters from states with which
158 Mississippi has a reciprocal agreement and to provide for sending
159 lists of names of Mississippi defaulters to the states with which
160 Mississippi has a reciprocal agreement for setoff of that state's
161 income tax refunds.

162 **SECTION 9.** (1) Pursuant to the provisions of Section
163 27-7-83, Mississippi Code of 1972, the commission may provide to a
164 claimant agency all information necessary to accomplish and
165 effectuate the intent of this act.

166 (2) The information obtained by a claimant agency from the
167 commission in accordance with the provisions of this act shall
168 retain its confidentiality and shall only be used by a claimant
169 agency in the pursuit of its debt collection duties and practices;
170 and any employee or former employee of any claimant agency who
171 unlawfully discloses any such information for any other purpose,
172 except as otherwise specifically authorized by law, shall be
173 subject to the same penalties specified by law for unauthorized
174 disclosure of confidential information by an agency or employee of
175 the commission.

176 **SECTION 10.** Claims to refunds allowed to be set off under
177 this act must be made by a claimant agency filing a written notice
178 with the commission of its intention to effect collection through
179 setoff under this act. The following is the order of priority for
180 multiple claims filed:

- 181 (a) The State Tax Commission;
182 (b) Claims of the Mississippi Department of Human Services;
183 (c) Claims of agencies not given a specific priority.

184 **SECTION 11.** This act shall take effect and be in force from
185 and after July 1, 2005.