

HOUSE BILL NO. 608

1 AN ACT TO AMEND SECTIONS 27-7-71, 27-13-43, 27-9-47 AND
2 27-7-315, MISSISSIPPI CODE OF 1972, TO REMOVE THE AUTHORITY OF THE
3 CHAIRMAN OF THE TAX COMMISSION TO REVIEW HIS DECISIONS ON ISSUES
4 OF INCOME TAX, CORPORATE TAX AND ESTATE TAX WHEN THE ISSUES ARE
5 APPEALED; TO PROVIDE THAT THE BOARD OF REVIEW SHALL REVIEW
6 DECISIONS PREVIOUSLY REVIEWED BY THE TAX COMMISSIONER; AND FOR
7 RELATED PURPOSES.

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

9 **SECTION 1.** Section 27-7-71, Mississippi Code of 1972, is
10 amended as follows:

11 27-7-71. (1) A taxpayer who feels aggrieved at any action
12 of the commissioner under Sections 27-7-49, 27-7-51 or 27-7-53,
13 may appeal to the board of review, as legally constituted and
14 authorized by Section 27-7-79, for a hearing in the matter within
15 thirty (30) days from the date of said action. The board of
16 review shall grant a hearing thereon at the earliest practical
17 date. At said hearing, the board of review shall try the issues
18 presented, according to law and the facts, and shall within thirty
19 (30) days from the date of said hearing make a determination * * *
20 and notify the taxpayer of its findings. Any overpayment of tax
21 determined by the approved order of the board of review shall be
22 credited, or refunded, to the taxpayer. Any tax deficiency,
23 including any penalty and interest, determined by the approved
24 order of the board of review shall be paid by the taxpayer within
25 thirty (30) days from the date of notification to the taxpayer,
26 and, if said sum is not paid within said thirty-day period, the
27 commissioner shall proceed to collect same under the provisions of
28 Sections 27-7-55 through 27-7-67 of this article; provided, that
29 within said thirty-day period the taxpayer may appeal to the State

30 Tax Commission from the decision of the board of review, as
31 hereinafter set out.

32 (2) A taxpayer who feels aggrieved at any decision by the
33 board of review, may appeal to the State Tax Commission by
34 petition, in writing, within thirty (30) days from the date of
35 said decision, for a hearing upon the action or decision of the
36 board of review, in which petition said taxpayer shall set forth
37 the reasons such hearing should be granted. The State Tax
38 Commission shall promptly consider the petition, grant the
39 hearing, and notify the petitioner of the time and place fixed for
40 the hearing. In any hearing before the State Tax Commission, two
41 (2) members constitute a quorum. At said hearing, the State Tax
42 Commission shall try the issues presented, according to the law
43 and the facts, and shall, as soon as practical thereafter, notify
44 the taxpayer of its determination. Any overpayment of tax which
45 the State Tax Commission may determine to have been paid shall be
46 credited or refunded to the taxpayer. Any tax deficiency,
47 including any penalty and interest, determined by the State Tax
48 Commission shall be paid within thirty (30) days from the date of
49 notification of the taxpayer, and if said sum is not paid within
50 said thirty-day period, the State Tax Commission shall proceed to
51 collect same under the provisions of Sections 27-7-55 through
52 27-7-67; provided that within said thirty-day period the taxpayer
53 may appeal from the decision of the State Tax Commission as
54 hereinafter set out.

55 **SECTION 2.** Section 27-13-43, Mississippi Code of 1972, is
56 amended as follows:

57 27-13-43. (1) A taxpayer who feels aggrieved at any action
58 of the commissioner under Sections 27-13-23 or 27-13-25, may
59 appeal to the board of review, as legally constituted and
60 authorized by Section 27-13-65, for a hearing in the matter within
61 thirty (30) days from the date of said action. The board of
62 review shall grant a hearing thereon at the earliest practical

63 date. At said hearing, the board of review shall try the issues
64 presented, according to law and the facts, and shall within thirty
65 (30) days from the date of said hearing make a determination * * *
66 and notify the taxpayer of its findings. Any overpayment of tax
67 determined by the approved order of the board of review shall be
68 credited, or refunded, to the taxpayer. Any tax deficiency,
69 including any penalty and interest, determined by the approved
70 order of the board of review shall be paid by the taxpayer within
71 thirty (30) days from the date of notification to the taxpayer and
72 if said sum is not paid within said thirty-day period, the
73 commissioner shall proceed to collect same under the provisions of
74 Sections 27-13-29 through 27-13-41 of this chapter; provided, that
75 within said thirty-day period the taxpayer may appeal to the State
76 Tax Commission from the decision of the board of review, as
77 hereinafter set out.

78 (2) A taxpayer who feels aggrieved at any decision by the
79 board of review, may appeal to the State Tax Commission by
80 petition, in writing, within thirty (30) days from the date of
81 said decision, for a hearing upon the action or decision of the
82 board of review, in which petition said taxpayer shall set forth
83 the reasons such hearing should be granted. The State Tax
84 Commission shall promptly consider the petition, grant the
85 hearing, and notify the petitioner of the time and place fixed for
86 the hearing. In any hearing before the State Tax Commission, two
87 (2) members constitute a quorum. At said hearing, the State Tax
88 Commission shall try the issues presented, according to the law
89 and the facts, and shall, as soon as practical thereafter, notify
90 the taxpayer of its determination. Any overpayment of tax which
91 the State Tax Commission may determine to have been paid shall be
92 credited or refunded to the taxpayer. Any tax deficiency,
93 including any penalty and interest, determined by the State Tax
94 Commission shall be paid within thirty (30) days from the date of
95 notification of the taxpayer, and if said sum is not paid within

96 said thirty-day period, the State Tax Commission shall proceed to
97 collect same under the provisions of Sections 27-13-29 through
98 27-13-41, provided that within said thirty-day period the taxpayer
99 may appeal from the decision of the State Tax Commission as
100 hereinafter set out.

101 **SECTION 3.** Section 27-9-47, Mississippi Code of 1972, is
102 amended as follows:

103 27-9-47. The executor may in writing apply to the board of
104 review for revision of the tax assessed against the estate at any
105 time within one (1) year from the date of the filing of the return
106 or from the date of notice of the assessment of an additional tax.
107 The board of review shall grant a hearing thereon and if, upon
108 such hearing, the board of review shall determine that the tax is
109 excessive or incorrect, the board of review shall resettle the
110 same according to the law and the facts and adjust the computation
111 of the tax accordingly. The board of review shall notify the
112 executor in writing of its determination and shall refund to the
113 executor the amount, if any, paid in excess of the tax found * * *
114 to be due. If the executor has failed without good cause to file
115 a return within the time prescribed by law or has filed a
116 fraudulent return or having filed an incorrect return has failed
117 after notice to file a proper return, the board of review shall
118 not reduce the tax below the amount for which the executor has
119 been found to be properly assessed.

120 If the executor is dissatisfied with the decision of the
121 board of review he may apply in writing to the entire commission
122 for a hearing, which hearing shall be granted as soon as
123 practicable and at least two (2) members of the commission shall
124 be present at said hearing and a determination of the tax
125 liability shall be made by the commission in the same manner as
126 provided for in the hearing before the board of review.

127 If the executor be dissatisfied with the decision of the
128 commission he shall have the right to appeal to the Chancery Court

129 of the First Judicial District of Hinds County, Mississippi, or
130 the chancery court where the estate is being administered, by
131 filing a bond with the chancery clerk in the amount of the tax
132 assessed, including additional tax, interest and penalties, if
133 any, and the estimated court costs, said bond to be made by a
134 bonding company qualified to write bonds within the State of
135 Mississippi, conditioned that any tax found due by the chancery
136 court will be promptly paid. The trial on appeal shall be a trial
137 de novo upon the question of the amount of the estate tax due upon
138 the estate, if any, and said court shall hear and determine said
139 matter in the same manner as any other case in said court and
140 shall have the right either to affirm, abate or modify the
141 assessment made by the commission.

142 If the executor be dissatisfied with the decision of the
143 chancery court, he shall have the right to appeal from the
144 decision of said court to the Supreme Court of the State of
145 Mississippi upon the filing of an appeal bond conditioned as above
146 set forth, which bond shall be made by some bonding company
147 authorized to do business in this state. The chancellor may, in
148 his discretion, permit the same bond to be used on appeal to the
149 Supreme Court as was used on appeal from the commission to the
150 chancery court, provided same is in sufficient amount. The
151 executor desiring to appeal from the order of the commission may,
152 if he so desires, pay the tax found to be due by the commission
153 and sue for a refund thereof either in the Chancery Court of the
154 First Judicial District of Hinds County, Mississippi, or in the
155 chancery court of said county where the estate is being
156 administered, in which instance a bond for court costs in at least
157 the amount of Five Hundred Dollars (\$500.00) shall be filed with
158 the chancery clerk of said county and in the event that refund is
159 ordered, said refund shall bear interest at the rate of six
160 percent (6%) per annum from the date of payment by the taxpayer
161 until said refund is made to him.

162 The commission shall have the same right of appeal from the
163 chancery court to the supreme court as is afforded the executor,
164 except that no appeal bond shall be required of the commission.
165 All suits under this chapter shall be brought in the name of or
166 against the commissioner.

167 **SECTION 4.** Section 27-7-315, Mississippi Code of 1972, is
168 amended as follows:

169 27-7-315. If any overpayment of any tax, interest or penalty
170 levied or provided for by Article 1 of this chapter, or in this
171 article, is not refunded to the taxpayer as provided in Section
172 27-7-313 within six (6) months after the final date for filing
173 returns as prescribed by law, the taxpayer may file a petition
174 with the board of review for a hearing on the claim for refund.
175 Within ten (10) days after the receipt of such petition, the board
176 of review shall either (a) make refund as requested in the return
177 filed by the taxpayer of the amount claimed by the taxpayer; or
178 (b) set a time and place for such hearing and give notice thereof
179 to the petitioner by registered or certified mail with return
180 receipt requested. The date set for such hearing shall be not
181 less than ten (10) days, nor more than thirty (30) days after
182 notice thereof is given to the petitioner. If, after such
183 hearing, the board of review shall determine that the petitioner
184 is entitled to a refund as claimed in the return, the board of
185 review shall refund to the petitioner the amount determined to be
186 due. If, after such hearing, the board of review determines that
187 the petitioner is not entitled to a refund for overpayment, the
188 board of review shall so notify the petitioner by registered mail
189 or by certified mail with return receipt requested.

190 If the petitioner is aggrieved by the decision of the board
191 of review, he may appeal from the * * * decision for a rehearing
192 before the State Tax Commission. Such appeal for a rehearing
193 shall be made within thirty (30) days from the date of notice by
194 the board of review, and the board of review shall set a time for

195 such rehearing to be held no longer than thirty (30) days from the
196 date of petitioner's request. The commission shall notify the
197 petitioner of its decision within ten (10) days from the date of
198 the rehearing. If the petitioner feels further aggrieved by the
199 decision of the commission, he may appeal therefrom to the
200 Chancery Court of Hinds County, or to the chancery court of the
201 county of petitioner's residence, within thirty (30) days from the
202 receipt of notice of the commission's decision. Further appeal
203 may be taken by the petitioner or the commission from the chancery
204 court to the Supreme Court in the same manner, as is provided by
205 law for other cases.

206 If any overpayment of tax as reflected on a return or amended
207 return filed, and verified by the commissioner or determined to be
208 due by the commissioner or commission when no overpayment is shown
209 on a return or amended return, is not refunded within ninety (90)
210 days after the prescribed due date of the return, the date the
211 return is filed, or the date the commissioner or commission
212 determines a refund as being due when no overpayment is shown on a
213 return or amended return, whichever is later, interest at the rate
214 of one percent (1%) per month shall be allowed on such overpayment
215 computed for the period after expiration of the ninety-day period
216 provided herein to the date of payment.

217 **SECTION 5.** This act shall take effect and be in force from
218 and after July 1, 2005.