

By: Representative Watson

To: Ways and Means

HOUSE BILL NO. 1195
(As Passed the House)

1 AN ACT TO AMEND SECTIONS 27-7-51 AND 27-7-53, MISSISSIPPI
2 CODE OF 1972, TO CLARIFY THAT THE ASSESSMENT OF A PENALTY FOR
3 FAILURE TO PAY INCOME TAX OR FILE AN INCOME TAX RETURN IS
4 PERMISSIVE; TO PROVIDE THAT A TAXPAYER FILING AN INDIVIDUAL INCOME
5 TAX RETURN WHO OWES ADDITIONAL INCOME TAX IN AN AMOUNT IN EXCESS
6 OF \$75.00 BUT NOT IN EXCESS OF \$3,000.00, MAY REQUEST THAT THE
7 CHAIRMAN OF THE STATE TAX COMMISSION ALLOW THE TAXPAYER TO PAY THE
8 ADDITIONAL TAX THROUGH AN INSTALLMENT AGREEMENT; TO PROVIDE THAT
9 THE CHAIRMAN OF THE STATE TAX COMMISSION MAY ALLOW SUCH A TAXPAYER
10 TO PAY THE ADDITIONAL INCOME TAX THROUGH AN INSTALLMENT AGREEMENT
11 IF THE CHAIRMAN OF THE STATE TAX COMMISSION DETERMINES THE
12 TAXPAYER IS FINANCIALLY UNABLE TO PAY THE ADDITIONAL TAX AND
13 CERTAIN OTHER CONDITIONS ARE SATISFIED; AND FOR RELATED PURPOSES.

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

15 SECTION 1. Section 27-7-51, Mississippi Code of 1972, is
16 amended as follows:

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

32 of thirty (30) days the taxpayer may appeal as set out in Sections
33 27-7-71 and 27-7-73.

34 (2) In the case of an overpayment of tax, interest shall be
35 computed under the provisions of Section 27-7-315. In the case of
36 an underpayment of tax, interest at the rate of one percent (1%)
37 per month from the due date of the return may be added or assessed
38 in addition to the additional tax due as hereinabove provided in
39 subsection (1).

40 (3) In case of failure to pay any additional taxes as
41 assessed under this section, * * * there may be added to the
42 additional amount assessed a penalty of one-half of one percent
43 (1/2 of 1%) of the amount of the additional tax if the failure is
44 for not more than one (1) month, with an additional one-half of
45 one percent (1/2 of 1%) for each additional month or fraction
46 thereof during which the failure continues, not to exceed
47 twenty-five percent (25%) in the aggregate.

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

65 twenty-five percent (25%) in the aggregate, unless it is shown
66 that the failure is due to reasonable cause and not due to willful
67 neglect.

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

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

79 In the event a court of final jurisdiction determines the
80 above provision to be void for any reason, it is hereby declared
81 the intent of the Legislature that affected taxpayers shall be
82 allowed a credit against future income tax liability as opposed to
83 a tax refund.

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

86 27-7-53. (1) (a) Except as otherwise provided in this
87 section, if a return is timely filed by the taxpayer but the tax
88 due is not paid, the commissioner shall make his assessment of tax
89 due by mail or by personal delivery of the assessment to the
90 taxpayer, which assessment shall constitute notice and demand for
91 payment. The taxpayer shall be given a period of thirty (30) days
92 from the date of the notice in which to pay the tax due, including
93 penalty and interest as hereinafter provided, and if said sum is
94 not paid within the period of thirty (30) days, the commissioner
95 shall proceed to collect same under the provisions of Sections
96 27-7-55 through 27-7-67 of this article; provided that within said

97 period of thirty (30) days the taxpayer may appeal as set out in
98 Sections 27-7-71 and 27-7-73.

99 (b) (i) If an individual return is timely filed by the
100 taxpayer and the amount of tax liability (determined without
101 regard to interest, penalties, additions to the tax and additional
102 amounts) of the taxpayer exceeds Seventy-five Dollars (\$75.00) but
103 does not exceed Three Thousand Dollars (\$3,000.00), the taxpayer
104 may request to pay the tax liability through an installment
105 agreement. The taxpayer must file such a request with the return
106 and must provide all information required by the commissioner. If
107 the commissioner determines a taxpayer is financially unable to
108 pay the tax liability, the commissioner may enter into an
109 agreement to accept payment of the tax liability in installments
110 if:

111 1. The taxpayer (and the taxpayer's spouse if
112 the tax liability relates to a joint return), during any of the
113 preceding five (5) years, has not: a. failed to file any return
114 required by this chapter, b. failed to pay any tax required by
115 this chapter or c. entered into an installment agreement under
116 this paragraph (b);

117 2. The agreement requires full payment of the
118 tax liability in equal installments within twelve (12) months from
119 the date the return was filed; and

120 3. The taxpayer agrees to comply with the
121 terms of the agreement.

122 (ii) Payments made through an installment
123 agreement shall be subject to the interest provisions of
124 subsection (3) of this section.

125 (iii) The commissioner may terminate an
126 installment agreement entered into under this paragraph (b) if he
127 determines the taxpayer provided inaccurate or incomplete
128 information before the agreement was entered into or he believes

129 the collection of the tax to which the agreement relates is in
130 jeopardy.

131 (iv) The commissioner may modify or terminate an
132 installment agreement entered into under this paragraph (b) if the
133 taxpayer fails to:

134 1. Pay any installment due under the
135 agreement;

136 2. Pay any other tax liability due under this
137 chapter when the liability is due; or

138 3. Provide a statement of financial condition
139 required by the commissioner.

140 (2) If no return is made by a taxpayer required by this
141 chapter to make a return, the commissioner shall determine the
142 taxpayer's liability from the best information available, which
143 determination shall be prima facie correct for the purpose of this
144 article, and the commissioner shall forthwith make an assessment
145 of the tax so determined to be due by mail or by personal delivery
146 of the assessment to the taxpayer, which assessment shall
147 constitute notice and demand for payment. The taxpayer shall be
148 given a period of thirty (30) days from the date of the notice in
149 which to pay the tax due, including penalty and interest as
150 hereinafter provided, and if said sum is not paid within the
151 period of thirty (30) days, the commissioner shall proceed to
152 collect same under the provisions of Sections 27-7-55 through
153 27-7-67 of this article; provided that within said period of
154 thirty (30) days the taxpayer may appeal as set out in Sections
155 27-7-71 and 27-7-73.

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

159 (4) In case of failure to file a return as required by this
160 chapter, * * * there may be added to the amount required to be
161 shown as tax on the return a penalty of five percent (5%) of the

162 amount of the tax if the failure is for not more than one (1)
163 month, with an additional five percent (5%) for each additional
164 month or fraction thereof during which the failure continues, not
165 to exceed twenty-five percent (25%) in the aggregate. Such
166 failure to file a return penalty shall not be less than One
167 Hundred Dollars (\$100.00).

168 (5) In case of failure to pay the amount shown as tax on any
169 return specified in subsections (1) and (2) of this section on or
170 before the date prescribed for payment of the tax, determined with
171 regard to any extension of time for payment or installment
172 agreement, or both, * * * there may be added to the amount shown
173 as tax on the return one-half of one percent (1/2 of 1%) of the
174 amount of the tax if the failure is for not more than one (1)
175 month, with an additional one-half of one percent (1/2 of 1%) for
176 each additional month or fraction thereof during which the failure
177 continues, not to exceed twenty-five percent (25%) in the
178 aggregate.

179 **SECTION 3.** This act shall take effect and be in force from
180 and after July 1, 2005.