

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2964

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; AND FOR RELATED PURPOSES.

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

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

8 27-7-51. (1) If, upon examination of a return made under
9 the provisions of this article, it appears that the correct amount
10 of tax is greater or less than that shown in the return, the tax
11 shall be recomputed. Any overpayment of tax so determined shall
12 be credited or refunded to the taxpayer. If the correct amount of
13 tax is greater than that shown in the return of the taxpayer, the
14 commissioner shall make his assessment of additional tax due by
15 certified mail or by personal delivery of the assessment to the
16 taxpayer, which assessment shall constitute notice and demand for
17 payment. The taxpayer shall be given a period of thirty (30) days
18 after receipt of notice in which to pay the additional tax due,
19 including penalty and interest as hereinafter provided, and if
20 said sum is not paid within the period of thirty (30) days, the
21 commissioner shall proceed to collect same under the provisions of
22 Sections 27-7-55 through 27-7-67, provided that within said period
23 of thirty (30) days the taxpayer may appeal as set out in Sections
24 27-7-71 and 27-7-73.

25 (2) In the case of an overpayment of tax, interest shall be
26 computed under the provisions of Section 27-7-315. In the case of
27 an underpayment of tax, interest at the rate of one percent (1%)
28 per month from the due date of the return may be added or assessed

29 in addition to the additional tax due as hereinabove provided in
30 subsection (1).

31 (3) In case of failure to pay any additional taxes as
32 assessed under this section, * * * there may be added to the
33 additional amount assessed a penalty of one-half of one percent
34 (1/2 of 1%) of the amount of the additional tax if the failure is
35 for not more than one (1) month, with an additional one-half of
36 one percent (1/2 of 1%) for each additional month or fraction
37 thereof during which the failure continues, not to exceed
38 twenty-five percent (25%) in the aggregate.

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

59 (5) In the case of a taxpayer who files a bond as provided
60 by Section 27-13-45 in lieu of payment of the additional tax found
61 to be due by the State Tax Commission, and such tax assessment or

62 a part thereof is upheld by the chancery court and/or the Supreme
63 Court, such assessment shall bear interest at the rate of one
64 percent (1%) per month from the due date until paid.

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

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

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

77 27-7-53. (1) If a return is timely filed by the taxpayer
78 but the tax due is not paid, the commissioner shall make his
79 assessment of tax due by mail or by personal delivery of the
80 assessment to the taxpayer, which assessment shall constitute
81 notice and demand for payment. The taxpayer shall be given a
82 period of thirty (30) days from the date of the notice in which to
83 pay the tax due, including penalty and interest as hereinafter
84 provided, and if said sum is not paid within the period of thirty
85 (30) days, the commissioner shall proceed to collect same under
86 the provisions of Sections 27-7-55 through 27-7-67 of this
87 article; provided that within said period of thirty (30) days the
88 taxpayer may appeal as set out in Sections 27-7-71 and 27-7-73.

89 (2) If no return is made by a taxpayer required by this
90 chapter to make a return, the commissioner shall determine the
91 taxpayer's liability from the best information available, which
92 determination shall be prima facie correct for the purpose of this
93 article, and the commissioner shall forthwith make an assessment
94 of the tax so determined to be due by mail or by personal delivery

95 of the assessment to the taxpayer, which assessment shall
96 constitute notice and demand for payment. The taxpayer shall be
97 given a period of thirty (30) days from the date of the notice in
98 which to pay the tax due, including penalty and interest as
99 hereinafter provided, and if said sum is not paid within the
100 period of thirty (30) days, the commissioner shall proceed to
101 collect same under the provisions of Sections 27-7-55 through
102 27-7-67 of this article; provided that within said period of
103 thirty (30) days the taxpayer may appeal as set out in Sections
104 27-7-71 and 27-7-73.

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

108 (4) In case of failure to file a return as required by this
109 chapter, * * * there may be added to the amount required to be
110 shown as tax on the return a penalty of five percent (5%) of the
111 amount of the tax if the failure is for not more than one (1)
112 month, with an additional five percent (5%) for each additional
113 month or fraction thereof during which the failure continues, not
114 to exceed twenty-five percent (25%) in the aggregate. Such
115 failure to file a return penalty shall not be less than One
116 Hundred Dollars (\$100.00).

117 (5) In case of failure to pay the amount shown as tax on any
118 return specified in subsections (1) and (2) of this section on or
119 before the date prescribed for payment of the tax, determined with
120 regard to any extension of time for payment, * * * there may be
121 added to the amount shown as tax on the return one-half of one
122 percent (1/2 of 1%) of the amount of the tax if the failure is for
123 not more than one (1) month, with an additional one-half of one
124 percent (1/2 of 1%) for each additional month or fraction thereof
125 during which the failure continues, not to exceed twenty-five
126 percent (25%) in the aggregate.

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