

Chapter No. 327
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HOUSE BILL NO. 1462

Originated in House Don Richardson Clerk

HOUSE BILL NO. 1462

AN ACT TO AMEND SECTION 27-7-87, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE PENALTY FOR GROSSLY NEGLIGENT PREPARATION OF AN INCOME TAX RETURN BY A PREPARER MAY BE IMPOSED FOR EACH RETURN THAT A PREPARER SO PREPARES; TO PROVIDE THAT PAID PREPARERS WHO ARE ASSESSED A PENALTY FOR THE GROSSLY NEGLIGENT PREPARATION OF RETURNS SHALL BE LIABLE FOR AN ADDITIONAL PENALTY IF HE FAILS TO LEGIBLY SIGN EACH RETURN AND INCLUDE HIS FEDERAL EMPLOYER IDENTIFICATION NUMBER OR PREPARER TAX IDENTIFICATION NUMBER ISSUED BY THE INTERNAL REVENUE SERVICE; TO AUTHORIZE THE COMMISSIONER OF REVENUE TO MAKE ASSESSMENTS AGAINST AND EFFECT COLLECTION FROM PERSONS WHO ARE SUBJECTED TO CERTAIN PENALTIES IN THE SAME MANNER THAT IS PROVIDED FOR THE ASSESSMENT AND COLLECTION OF INCOME TAXES; TO AMEND SECTION 27-7-83, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE DEPARTMENT OF REVENUE TO MAKE AVAILABLE INFORMATION NECESSARY FOR THE ADMINISTRATION AND ENFORCEMENT OF SECTION 27-7-87; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 27-7-87, Mississippi Code of 1972, is amended as follows:

27-7-87. (1) Any person making the returns and reports required by this article, who shall knowingly declare or swear falsely, shall be guilty of perjury and, upon conviction, shall be punished by imprisonment in the State Penitentiary for a term not exceeding ten (10) years.

(2) If any individual, corporation, partnership or fiduciary, or any officer, employee, or representative thereof, or member of a partnership, required to pay any tax, make any return, or supply any information or exhibit any books, or records, when requested to do so by the commissioner, or any agent designated by the commissioner, whether with reference to their own returns or not, willfully refuses to do so, the same shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than One Hundred Dollars (\$100.00), nor more than Five Hundred Dollars

(\$500.00), or be imprisoned not more than six (6) months, or both. Failure by any of the previously mentioned entities to supply information pursuant to a written request within a reasonable amount of time may subject the entity to a civil penalty of Five Hundred Dollars (\$500.00) per each written request.

(3) Any person violating the provisions of Section 27-7-83 shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment not exceeding one (1) year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of five (5) years thereafter.

(4) (a) Any preparer who is grossly negligent in the preparation of a tax return shall be liable for a penalty of Five Hundred Dollars (\$500.00) for each return so prepared. Every paid preparer must legibly sign each return prepared and must also furnish his federal employer identification number or preparer tax identification number issued by the Internal Revenue Service.

(b) For purposes of this subsection, the term "grossly negligent" shall include, but not be limited to:

(i) * * * Submission of returns reflecting a tax liability that is understated by twenty-five percent (25%) or greater.

(ii) * * * Submission of returns containing errors affecting the calculation of tax after being notified of these types of errors by the department.

(iii) Submission of returns claiming a position that is not reasonably sustainable by the department, Board of Tax Appeals or an appropriate appellate court.

(iv) * * * Submission of returns reporting deductions, exemptions or other reductions to income that cannot be documented to support the return.

(c) The penalty provided for in this subsection may be imposed for each return that a preparer has so prepared.

(d) If a paid preparer is assessed a penalty under this subsection and he fails to legibly sign each return and include his federal employer identification number or preparer tax identification number issued by the Internal Revenue Service, the paid preparer shall be liable for a penalty of Five Hundred Dollars (\$500.00) in addition to any other penalty authorized by this subsection.

(e) If any person is found to be engaging in the activity of preparing tax returns for others after being penalized as provided for in this subsection, it shall be the duty of the commissioner to proceed to seek an injunction to prevent the person from continuing the preparation of returns.

(5) Any individual, corporation or other entity who fails to file a return, or fails to file a complete return, within the prescribed time including extensions and after a written request therefor from the Department of Revenue may be subject to a penalty. The penalty is Twenty-five Dollars (\$25.00) per incomplete or omitted attachment or schedule. The maximum penalty per return is Five Hundred Dollars (\$500.00). The required schedules or attachments are to be specified by the commissioner in the Income Tax Regulations or the instructions with the tax forms.

(6) The commissioner shall make assessments against and effect collection from persons who are subjected to a penalty under this section in the same manner that is provided for the assessment and collection of taxes levied by this chapter.

SECTION 2. Section 27-7-83, Mississippi Code of 1972, is amended as follows:

27-7-83. (1) Returns and return information filed or furnished under the provisions of this chapter shall be confidential, and except in accordance with proper judicial order,

or as otherwise authorized by this section, it shall be unlawful for * * * any deputy, agent, clerk or other officer or employee of the Department of Revenue or the Mississippi Department of Information Technology Services, or any former employee thereof, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required. The provisions of this section shall apply fully to any federal return, a copy of any portion of a federal return, or any information reflected on a federal return which is attached to or made a part of the state tax return. Likewise, the provisions of this section shall apply to any federal return or portion thereof, or to any federal return information data which is acquired from the Internal Revenue Service for state tax administration purposes pursuant to the Federal-State Exchange Program cited at Section 6103, Federal Internal Revenue Code. The term "proper judicial order" as used in this section shall not include subpoenas or subpoenas duces tecum, but shall include only those orders entered by a court of record in this state after furnishing notice and a hearing to the taxpayer and the Department of Revenue. The court shall not authorize the furnishing of such information unless it is satisfied that the information is needed to pursue pending litigation wherein the return itself is in issue, or the judge is satisfied that the need for furnishing the information outweighs the rights of the taxpayer to have such information secreted.

(2) Returns and return information with respect to taxes imposed by this chapter shall be open to inspection by or disclosure to the Commissioner of the Internal Revenue Service of the United States, or the proper officer of any state imposing an income tax similar to that imposed by this chapter, or the authorized representatives of such agencies. Such inspection shall be permitted, or such disclosure made, only upon written request by the head of such agencies, or the district director in the case of the Internal Revenue Service, and only to the

representatives of such agencies designated in a written statement to the commissioner as the individuals who are to inspect or to receive the return or return information on behalf of such agency. The commissioner is authorized to enter into agreements with the Internal Revenue Service and with other states for the exchange of returns and return information data, or the disclosure of returns or return information data to such agencies, only to the extent that the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of the tax laws of this state.

(3) (a) The return of a person shall, upon written request, be open to inspection by or disclosure to:

(i) In the case of the return of an individual, that individual;

(ii) In the case of an income tax return filed jointly, either of the individuals with respect to whom the return is filed;

(iii) In the case of the return of a partnership, any person who was a member of such partnership during any part of the period covered by the return;

(iv) In the case of the return of a corporation or a subsidiary thereof, any person designated by resolution of its board of directors or other similar governing body, or any officer or employee of such corporation upon written request signed by any principal officer and attested to by the secretary or other officer;

(v) In the case of the return of an estate, the administrator, executor or trustee of such estate, and any heir at law, next of kin or beneficiary under the will, of the decedent, but only to the extent that such latter persons have a material interest which will be affected by information contained therein;

(vi) In the case of the return of a trust, the trustee or trustees, jointly or separately, and any beneficiary of such trust, but only to the extent that such beneficiary has a material interest which will be affected by information contained therein;

(vii) In the case of the return of an individual or a return filed jointly, any claimant agency seeking to collect a debt through the set-off procedure established in Sections 27-7-701 through 27-7-713 and Sections 27-7-501 through 27-7-519, from an individual with respect to whom the return is filed.

(b) If an individual described in paragraph (a) is legally incompetent, the applicable return shall, upon written request, be open to inspection by or disclosure to the committee, trustee or guardian of his estate.

(c) If substantially all of the property of the person with respect to whom the return is filed is in the hands of a trustee in bankruptcy or receiver, such return or returns for prior years of such person shall, upon written request, be open to inspection by or disclosure to such trustee or receiver, but only if the commissioner finds that such receiver or trustee, in his fiduciary capacity, has a material interest which will be affected by information contained therein.

(d) Any return to which this section applies shall, upon written request, also be open to inspection by or disclosure to the attorney-in-fact duly authorized in writing by any of the persons described in paragraph (a) of this subsection to inspect the return or receive the information on his behalf, subject to the conditions provided in paragraph (a).

(e) Return information with respect to any taxpayer may be open to inspection by or disclosure to any person authorized by this subsection to inspect any return of such taxpayer if the commissioner determines that such disclosure would not seriously impair state tax administration.

(4) The State Auditor and the employees of his office shall have the right to examine only such tax returns as are necessary for auditing the Department of Revenue, and the same prohibitions against disclosure which apply to the Department of Revenue shall apply to the State Auditor and his employees or former employees.

(5) Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the Attorney General, or any other attorney representing the state, of the report or return of any taxpayer who shall bring action to set aside the tax thereon, or against whom any action or proceeding has been instituted to recover any tax or penalty imposed.

(6) Nothing in this section shall prohibit the commissioner from making available information necessary to recover taxes owing the state pursuant to the authority granted in Section 27-75-16, Mississippi Code of 1972.

(7) Reports and returns required under the provisions of this chapter shall be preserved in accordance with approved records control schedules. No records, however, may be destroyed without the approval of the Director of the Department of Archives and History.

(8) The department is authorized to disclose to the Child Support Unit of the Department of Human Services the name, address, social security number, amount of income, source of income and assets for individuals who are delinquent in the payment of any child support as defined in Section 93-11-101, Mississippi Code of 1972.

(9) Nothing in this section shall prohibit the department from exchanging information with the federal government that is necessary to offset income tax refund payment on debts owed to this state or the United States.

(10) Nothing in this section shall prohibit the department from making available information that is necessary to be disclosed for the administration and enforcement of Section 27-7-87.

SECTION 3. This act shall take effect and be in force from and after July 1, 2010.

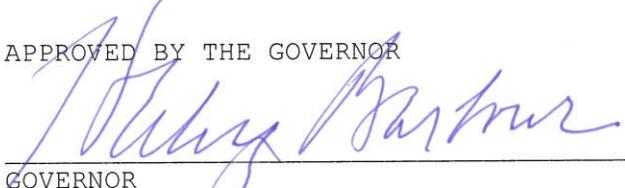
PASSED BY THE HOUSE OF REPRESENTATIVES
February 3, 2010


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 3, 2010


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

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