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HOUSE BILL NO. 704

Originated in House Don Richardson Clerk

HOUSE BILL NO. 704

AN ACT TO AMEND SECTION 27-3-73, AS AMENDED BY HOUSE BILL NO. 1460, SENATE BILL NO. 3075 AND SENATE BILL NO. 3082, 2010 REGULAR SESSION, SECTION 27-7-83, AS AMENDED BY HOUSE BILL NO. 1462, SENATE BILL NO. 3075 AND SENATE BILL NO. 3082, 2010 REGULAR SESSION, AND SECTION 27-65-81, AS AMENDED BY SENATE BILL NO. 3075 AND SENATE BILL NO. 3082, 2010 REGULAR SESSION, MISSISSIPPI CODE OF 1972, TO ALLOW FOR THE RELEASE OF INCOME TAX AND SALES TAX INFORMATION AND RECORDS TO THE DEPARTMENT OF HUMAN SERVICES CHILD SUPPORT UNIT AND FRAUD INVESTIGATION UNIT FOR INDIVIDUALS WHO ARE DELINQUENT IN CHILD SUPPORT PAYMENTS; TO BRING FORWARD SECTION 27-13-57, AS AMENDED BY SENATE BILL NO. 3075 AND SENATE BILL NO. 3082, 2010 REGULAR SESSION, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 27-3-73, Mississippi Code of 1972, as amended by House Bill No. 1460, Senate Bill No. 3075, and Senate Bill No. 3082, 2010 Regular Session, is amended as follows:

27-3-73. (1) Except in accordance with proper judicial order or as otherwise provided in this section or as authorized in Section 27-4-3, it shall be unlawful for the Commissioner of Revenue, or any deputy, agent, clerk or other officer or employee of the Department of Revenue, 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 on any taxes collected by reports received by the Department of Revenue. This provision relates to all taxes collected by the Department of Revenue and not referred to in Sections 27-7-83, 27-13-57 and 27-65-81, requiring confidentiality of income tax, franchise tax and sales tax returns. All system edits, thresholds, and any other automated system calculations used by the Department of Revenue in the processing of returns or statistics or used to determine the

correct tax due for all taxes administered by the department shall be considered confidential information and may not be divulged or made known. 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 an action or proceeding has been instituted to recover any tax or penalty imposed. Additionally, nothing in this section shall prohibit the Commissioner of Revenue from making available information necessary to recover taxes owing the state pursuant to the authority granted in Section 27-75-16 * * *.

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.

However, information relating to possible tax liability to other states or the federal government may be furnished to the revenue departments of those states or the federal government when the states or federal government grant a like comity to Mississippi.

(2) 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 office.

(3) Officers and employees of the Mississippi Development Authority who execute a confidentiality agreement with the Department of Revenue shall be authorized to discuss and examine information to which this section applies at the offices of the Mississippi Department of Revenue. This disclosure is limited to information necessary to properly administer the programs under the jurisdiction of the Mississippi Development Authority. The Department of Revenue is authorized to disclose to officers and employees of the Mississippi Development Authority who execute a confidentiality agreement the information necessary under the circumstances. The same prohibitions against disclosure which apply to the Department of Revenue shall apply to the officers or employees of the Mississippi Development Authority.

(4) Any person who violates the provisions of this section shall be guilty of a misdemeanor and on conviction thereof shall be fined not more than One Thousand Dollars ($1,000.00) or imprisoned not more than six (6) months in the county jail, or both.

(5) The Commissioner of Revenue and the Department of Revenue are authorized to disclose to the Child Support Unit and to the Fraud Investigation Unit of the Department of Human Services without the need for a subpoena or proper judicial order the name, address, social security number, amount of income, amount of sales tax, source of income, assets and other relevant information, records and tax forms for individuals who are delinquent in the payment of any child support as defined in Section 93-11-101 or who are under investigation for fraud or abuse of any state or federal program or statute as provided in Section 43-1-23.

SECTION 2. Section 27-7-83, Mississippi Code of 1972, as amended by House Bill No. 1462, Senate Bill No. 3075, and Senate Bill No. 3082, 2010 Regular Session, 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, as otherwise authorized by this section or as authorized in Section 27-4-3, it shall be unlawful for the Commissioner of Revenue or 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 of Revenue as the individuals who are to inspect or to receive the return or return information on behalf of such agency. The Commissioner of Revenue 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 of Revenue 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 of Revenue 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) Officers and employees of the Mississippi Development Authority who execute a confidentiality agreement with the Department of Revenue shall be authorized to discuss and examine information to which this section applies at the offices of the Mississippi Department of Revenue. This disclosure is limited to information necessary to properly administer the programs under the jurisdiction of the Mississippi Development Authority. The Department of Revenue is authorized to disclose to officers and employees of the Mississippi Development Authority who execute a confidentiality agreement the information necessary under the circumstances. The same prohibitions against disclosure which apply to the Department of Revenue shall apply to the officers or employees of the Mississippi Development Authority.

(6) 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.

(7) 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.

(8) 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.

(9) The Department of Revenue is authorized to disclose to the Child Support Unit and to the Fraud Investigation Unit of the Department of Human Services without the need for a subpoena or proper judicial order the name, address, social security number, amount of income, source of income, assets and other relevant information, records and tax forms for individuals who are delinquent in the payment of any child support as defined in Section 93-11-101 or who are under investigation for fraud or abuse of any state or federal program or statute as provided in Section 43-1-23.

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

(11) 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. Section 27-65-81, Mississippi Code of 1972, as amended by Senate Bill No. 3075 and Senate Bill No. 3082, 2010 Regular Session, is amended as follows:

27-65-81. (1) Applications, returns and information contained therein filed or furnished under this chapter shall be confidential, and except in accordance with proper judicial order, or as otherwise authorized by this section or as authorized by

Section 27-4-3, it shall be unlawful for the Commissioner of Revenue or any deputy, agent, clerk or other officer or employee of the Department of Revenue or 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 on any application, report or return required.

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) Such information contained on the application, returns or reports may be furnished to:

(a) Members and employees of the Department of Revenue and the income tax department thereof, for the purpose of checking, comparing and correcting returns;

(b) The Attorney General, or any other attorney representing the state in any action in respect to the amount of tax under the provisions of this chapter;

(c) The revenue department of other states or the federal government when said states or federal government grants a like comity to Mississippi.

(3) 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 office.

(4) Officers and employees of the Mississippi Development Authority who execute a confidentiality agreement with the Department of Revenue shall be authorized to discuss and examine information to which this section applies at the offices of the Mississippi Department of Revenue. This disclosure is limited to information necessary to properly administer the programs under the jurisdiction of the Mississippi Development Authority. The Department of Revenue is authorized to disclose to officers and employees of the Mississippi Development Authority who execute a confidentiality agreement the information necessary under the circumstances. The same prohibitions against disclosure which apply to the Department of Revenue shall apply to the officers or employees of the Mississippi Development Authority.

(5) Nothing in this section shall prohibit the Commissioner of Revenue from making available information necessary to recover taxes owing the state pursuant to the authority granted in Section 27-75-16.

(6) The Department of Revenue is authorized to disclose to the Child Support Unit and to the Fraud Investigation Unit of the Department of Human Services without the need for a subpoena or proper judicial order the name, address, social security number, amount of income, amount of sales tax, source of income, assets and other relevant information, records and tax forms for individuals who are delinquent in the payment of any child support as defined in Section 93-11-101 or who are under investigation for fraud or abuse of any state or federal program or statute as provided in Section 43-1-23.

SECTION 4. Section 27-13-57, Mississippi Code of 1972, as amended by Senate Bill No. 3075 and Senate Bill No. 3082, 2010 Regular Session, is brought forward as follows:

27-13-57. (1) Except in accordance with the proper judicial order, or as otherwise provided in this section or as authorized in Section 27-4-3, it shall be unlawful for the Commissioner of

Revenue or any deputy, agent, clerk or other officer or employee of the Department of Revenue to divulge or make known in any manner any particulars set forth or disclosed in any report or return required under this chapter. When a combined report or return is filed as authorized by Section 27-13-17(5), each report or return which composes the combined return shall be considered separate for the purpose of any examinations authorized in this section and only particulars relating to the specific return or report set forth in the judicial order or as otherwise provided shall be considered lawfully divulged. 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. 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 or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or penalty imposed by this chapter. Reports and returns 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.

However, information relating to possible tax liability of other states or the federal government may be furnished to the

revenue department of those states or the federal government when those states or the federal government grant a like comity to Mississippi.

(2) 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 office.

(3) Officers and employees of the Mississippi Development Authority who execute a confidentiality agreement with the Department of Revenue shall be authorized to discuss and examine information to which this section applies at the offices of the Mississippi Department of Revenue. This disclosure is limited to information necessary to properly administer the programs under the jurisdiction of the Mississippi Development Authority. The Department of Revenue is authorized to disclose to officers and employees of the Mississippi Development Authority who execute a confidentiality agreement the information necessary under the circumstances. The same prohibitions against disclosure which apply to the Department of Revenue shall apply to the officers or employees of the Mississippi Development Authority.

(4) Nothing in this section shall prohibit the Commissioner of Revenue 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.

(5) Any person violating the provisions of this section shall be guilty of a misdemeanor and on conviction shall be punished by a fine of not exceeding Five Hundred Dollars ($500.00), 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.

SECTION 5. This act shall take effect and be in force from and after July 1, 2010.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 26, 2010

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 26, 2010

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

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