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Chapter No. 470
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HOUSE BILL NO. 892

Originated in House _____ Clerk

HOUSE BILL NO. 892

AN ACT TO AMEND SECTIONS 27-7-49, 27-13-49 AND 27-65-42, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT EXAMINATION OF A TAXPAYER'S INCOME, FRANCHISE AND SALES TAX RETURNS SHALL BE MADE WITHIN THREE YEARS OF THE DUE DATE OR THE DATE THE RETURN WAS FILED, WHICHEVER IS LATER, UNLESS THE TAXPAYER IS PROPERLY NOTIFIED OF THE EXAMINATION WITHIN THE THREE-YEAR EXAMINATION PERIOD IN WHICH CASE THE EXAMINATION MUST BE COMPLETED WITHIN ONE YEAR AFTER THE EXPIRATION OF THE THREE-YEAR EXAMINATION PERIOD; TO PROVIDE THAT THE THREE-YEAR AND ONE-YEAR LIMITATIONS SHALL NOT APPLY IN CERTAIN CASES; TO AMEND SECTIONS 27-7-313 AND 27-73-5, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND SECTION 27-65-37, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF IN AN AUDIT OF THE SALES TAX RECORDS OF A TAXPAYER BY THE DEPARTMENT OF REVENUE IT IS DETERMINED THAT DURING THE PERIOD BEING AUDITED THE TAXPAYER REPORTED AND PAID TAX IN ACCORDANCE WITH A METHOD USED DURING A PRIOR PERIOD WHICH HAD BEEN AUDITED BY THE DEPARTMENT AND NOT FOUND TO RESULT IN ANY ADDITIONAL SALES TAX DUE, THE DEPARTMENT SHALL BE ESTOPPED FROM COLLECTING ANY ADDITIONAL TAXES AS A RESULT OF THE USE OF THE PREVIOUSLY AUDITED METHOD UNDER CERTAIN CIRCUMSTANCES; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 27-7-49, Mississippi Code of 1972, is amended as follows:

27-7-49. (1) Returns shall be examined by the commissioner or his duly authorized agents within three (3) years from the due

date or the date the return was filed, whichever is later, and no determination of a tax overpayment or deficiency shall be made by the commissioner * * * after the expiration of * * * the three-year period, except as * * * provided in this section and as provided in Section 27-7-307.

(2) When an examination of a return made under this article has been commenced, and the taxpayer notified * * * of the examination, either by certified mail or personal delivery by an agent of the commissioner, within the three-year examination period provided in subsection (1) of this section, the determination of the correct tax liability may be made by the commissioner after the expiration of * * * the three-year examination period, provided that * * * the determination shall be made * * * within one (1) year after the expiration of the three-year examination period; however, this limitation and the limitation contained in subsection (1) of this subsection shall not apply:

(a) To any tax period for which the taxpayer failed to file a return, in which case the tax, including any applicable penalties and interest, may be assessed by the commissioner at any time and the tax, penalties and/or interest so assessed may be collected by the commissioner as otherwise provided by law.

(b) In the case of a false or fraudulent return with the intent to evade tax. In such a case the commissioner is authorized to compute, determine and assess at any time the

estimated amount of tax due on the return, including any applicable penalties and interest, from any information in his or her possession, and after the tax, penalties and/or interest are assessed, to collect them as otherwise provided by law.

(c) In the case of an agreement in writing entered into by the commissioner and the taxpayer, made prior to the expiration of the applicable time periods provided for in subsections (1) and (2) of this section, consenting to the examination of a return. In such a case the determination of a tax overpayment or deficiency and/or the issuance of an assessment may be made within the agreed upon period. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period.

(d) In a case in which a taxpayer requests an extension of time for filing any return required by this article, and the request is granted. In such a case the limitation of time for examining the return and determining any tax overpayment or assessing any tax deficiency from the return shall be extended for a like period.

(3) Taxpayers shall keep and maintain an accurate and complete set of records and other information sufficient to allow the department to determine the correct amount of tax due. The records and other information shall be open and available for inspection by the department upon request at a reasonable time and location. Refusal or delay by the taxpayer to provide

documentation for examination upon the department's request shall result in an assessment being made from any information available, which shall be prima facie correct.

(* * *4) Where the reported taxable income of a taxpayer has been increased or decreased by the Internal Revenue Service, the three-year examination period provided in subsection (1) of this section shall not be applicable, insofar as the Mississippi income tax liability is affected by the specific changes made by said Internal Revenue Service. However, no additional assessment or no refund shall be made under the provisions of this article after three (3) years from the date the Internal Revenue Service disposes of the tax liability in question.

* * *

(* * *5) Where the reportable taxable income of a taxpayer has been decreased by the carryback of a net casualty loss deduction under Section 27-7-20 or the carryback of a net operating loss deduction under Section 27-7-17, the three-year examination period provided under subsection (1) of this section shall not be applicable insofar as the Mississippi income tax liability is affected by the carryback of the net casualty loss deduction or the carryback of the net operating loss deduction.

SECTION 2. Section 27-13-49, Mississippi Code of 1972, is amended as follows:

27-13-49. (1) Returns shall be examined by the commissioner or his duly authorized agents within three (3) years from the due

date or the date the return was filed, whichever is later, and no determination of a tax overpayment or deficiency shall be made by the commissioner * * * after the expiration of * * * the three-year period except as * * * provided in this section.

(2) When an examination of a return made under this chapter has been commenced, and the taxpayer notified * * * of the examination by certified mail, or personal delivery by an agent of the commissioner within the three-year examination period provided in subsection (1) of this section, the determination of the correct tax liability may be made by the commissioner after the expiration of * * * the three-year examination period, provided that * * * the determination shall be made * * * within one (1) year after the expiration of the three-year examination period provided for in subsection (1) of this section; however, this limitation and the limitation provided for in subsection (1) of this section shall not apply:

(a) To any tax period for which the taxpayer failed to file a return, in which case the tax, including any applicable penalties and interest, may be assessed by the commissioner at any time and the tax, penalties and/or interest so assessed may be collected by the commissioner as otherwise provided by law.

(b) In the case of a false or fraudulent return with the intent to evade tax. In such a case the commissioner is authorized to compute, determine, and assess at any time the estimated amount of tax due on the return, including any

applicable penalties and interest, from any information in his or her possession, and after the tax, penalties and/or interest are assessed, to collect them as otherwise provided by law.

(c) In the case of an agreement in writing entered into by the commissioner and the taxpayer, made prior to the expiration of the applicable time periods provided for in subsections (1) and (2) of this section, consenting to the examination of a return. In such a case the determination of a tax overpayment or deficiency and/or the issuance of an assessment may be made within the agreed upon period. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period.

(d) In a case in which a taxpayer requests an extension of time for filing any return required by this chapter, and the request is granted. In such a case the limitation of time for examining the return and determining any tax overpayment or assessing any tax deficiency from the return shall be extended for a like period.

(3) Taxpayers shall keep and maintain an accurate and complete set of records and other information sufficient to allow the department to determine the correct amount of tax due. The records and other information shall be open and available for inspection by the department upon request at a reasonable time and location. Refusal or delay by the taxpayer to provide documentation for examination upon the department's request shall

result in an assessment being made from any information available, which shall be prima facie correct.

(* * *4) Where the federal income tax return of a taxpayer has been changed by the Internal Revenue Service, the three-year examination period provided in subsection (1) of this section shall not be applicable, insofar as the Mississippi franchise tax liability is affected by the specific changes made by said Internal Revenue Service. However, no additional assessment or no refund shall be made under the provisions of this chapter after three (3) years from the date the Internal Revenue Service disposes of the tax liability in question.

* * *

(5) A taxpayer may apply to the commissioner for revision of any return filed under this chapter at any time within three (3) years from the due date, or the date the return was filed, whichever is later.

SECTION 3. Section 27-65-42, Mississippi Code of 1972, is amended as follows:

27-65-42. (1) The amount of taxes due on any return which has been filed as required by this chapter shall be determined and assessed within thirty-six (36) months from the date * * * the return was filed * * * except as otherwise provided in this section and Section 27-65-55.

* * *

(2) When an examination of a taxpayer's records to verify returns made under this chapter has been initiated and the taxpayer notified of the examination, either by certified mail or personal delivery by an agent of the commissioner, within the thirty-six-month examination period provided for in subsection (1) of this section, the determination of the correct tax liability shall be made by the commissioner within one (1) year after the expiration of the thirty-six-month examination period; however, this limitation shall not apply:

(a) To any tax period for which the taxpayer failed to file a return, in which case the tax, including any applicable penalties and interest, may be assessed by the commissioner at any time and the tax, penalties and/or interest so assessed may be collected by the commissioner as otherwise provided by law.

(b) In the case of a false or fraudulent return with the intent to evade tax. In such a case the commissioner is authorized to compute, determine, and assess at any time the estimated amount of tax due on the return, including any applicable penalties and interest, from any information in his or her possession, and after the tax, penalties and/or interest are assessed, to collect them as otherwise provided by law.

(c) In the case of an agreement in writing entered into by the commissioner and the taxpayer, made prior to the expiration of the applicable time periods provided for in subsections (1) and (2) of this section, consenting to the examination of a return.

In such a case the determination of a tax overpayment or deficiency and/or the issuance of an assessment may be made within the agreed upon period. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period.

(d) In a case in which a taxpayer requests an extension of time for filing any return required by this chapter, and the request is granted. In such a case the limitation of time for examining the return and determining any tax overpayment or assessing any tax deficiency from the return shall be extended for a like period.

(3) Taxpayers shall keep and maintain an accurate and complete set of records and other information sufficient to allow the department to determine the correct amount of tax due. The records and other information shall be open and available for inspection by the department upon request at a reasonable time and location. Refusal or delay by the taxpayer to provide documentation for examination upon the department's request shall result in an assessment being made from any information available, which shall be prima facie correct.

SECTION 4. Section 27-7-313, Mississippi Code of 1972, is amended as follows:

27-7-313. In the case of any overpayment of any tax, interest or penalty levied or provided for in Article 1 of this chapter, or in this article, whether by reason of excessive

withholding, error on the part of the taxpayer, erroneous assessment of tax, or otherwise, the excess shall be refunded to the taxpayer.

When, upon examination of any return made under this article, or under the provisions of Article 1 of this chapter, it appears that an amount of income tax has been paid in excess of the amount properly due, then the amount of the excess shall be credited against any income tax then due from the taxpayer under any other return required by this article, or Article 1 of this chapter. Refunds or credits may be withheld or applied against any other tax determined finally to be due if the taxpayer has failed to pay any tax finally due as required by the provisions of the laws administered by the * * * department. Any excess after such application shall be certified to the State Auditor of Public Accounts by the commissioner. The * * * Auditor is hereby authorized to make * * * any investigation and audit of the claim as he finds necessary. If he finds that the commissioner is correct in his determination, the Auditor may issue his warrant to the State Treasurer in favor of the taxpayer for the amount of tax erroneously paid into the State Treasury. No refund shall be granted under this article or under the provisions of Article 1 of this chapter unless a claim for * * * the refund is made within three (3) years from the date the return is due, or within three (3) years from the final day of an extension period previously granted by the commissioner pursuant to the provisions of Section

27-7-50; however, the restrictions imposed by this section do not apply to those refund requests or claims made in compliance with * * * Section 27-7-49.

The State Treasurer shall withhold from all income taxes collected each month an amount necessary to make refunds expected to be approved by the State Auditor during the following month. This amount shall be placed in a special fund, separate and apart from the General Fund of the state, and used for the purpose of making refunds under the income tax laws of the state. All refunds made under this article shall be made as quickly as possible upon receipt of the proper proof, as required by the State Auditor.

In order to obtain a refund, * * * <u>an</u> employee shall attach to his return a copy of the withholding statement required to be furnished him by his employer as provided in Section 27-7-311. The making of any refund shall not be conclusive of the tax due by any individual, but shall be made subject to the future audit of his return and the determination of his liability. Bond requirements of Section 7-7-57 shall not apply to warrants for refund of income tax.

* * *

SECTION 5. Section 27-73-5, Mississippi Code of 1972, is amended as follows:

27-73-5. <u>Except as otherwise provided in Sections 27-7-49, 27-13-49 and 27-65-42,</u> all suits by any taxpayer for the recovery

of any privilege, income, franchise, or other excise tax, and all applications or proceedings for any refund or credit of * * * these taxes shall be filed or made within three (3) years next after the return was filed, or from the date the assessment of the tax was made, or from the date the tax was paid, as the case may be, whichever is the earlier, and no recovery of taxes under any such suit shall be had and no refund of taxes shall be made unless * * * the suit or application was filed within * * * the period of limitation.

* * * However, as to income taxes the three-year statute of limitations shall be extended to six (6) years in cases where the reported net income of a taxpayer has been reduced by the * * * Internal Revenue Service for any taxable period.

SECTION 6. Section 27-65-37, Mississippi Code of 1972, is amended as follows:

27-65-37. (1) If adequate records of the gross income or gross proceeds of sales are not maintained or invoices preserved as provided herein, or if an audit of the records of a taxpayer, or any return filed by him, or any other information discloses that taxes are due and unpaid, the commissioner shall make assessments of taxes, damages, and interest from any information available, which shall be prima facie correct. However, if in an audit of the records of a taxpayer it is determined that during the period being audited the taxpayer reported and paid tax in accordance with a method used during a prior period which had been

audited by the commissioner and not found to result in any additional tax due, the commissioner shall be estopped from collecting any additional tax as a result of the use of this previously audited method for any period prior to notification by the commissioner or his agent during the current audit that use of the previously audited method would result in additional tax being due if it is determined, through all information available regarding this taxpayer, that:

(a) The method in issue was previously audited by the commissioner with no additional tax determined to be due under such method;

(b) The method under consideration in the current audit is the same method that was used in the prior audit;

(c) There has not been a statutory or regulatory change that would have resulted in additional tax being due under this method after the statutory or regulatory change; and

(d) The taxpayer detrimentally relied on the fact that this method had been previously audited and not found to result in additional tax.

(2) The commissioner shall give notice to the taxpayer of * * * the assessments and demand payment of the tax, damages and interest within sixty (60) days from the date of the notice. The notice shall be sent by regular mail or delivered by an agent of the commissioner either to the taxpayer or someone of suitable

age and discretion at the taxpayer's residence or place of business.

(3) If the taxpayer shall fail or refuse to comply with the notice of assessment or shall fail to petition for a hearing, the commissioner shall proceed as provided in Section 27-65-39.

SECTION 7. Nothing in this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the provisions of the tax laws of this state in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued for any tax period and/or tax year beginning before the date on which this act goes into effect and for the execution of any warrant under such laws for a tax period and/or tax year beginning before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws in

regard to any tax period and/or tax year beginning prior to the date on which this act becomes effective.

SECTION 8. This act shall take effect and be in force from and after January 1, 2013.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 12, 2013

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 14, 2013

Tate Reeves

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

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