3/19/19 9:41 A.M.

Chapter No. 345
19/HR31/R1328
CST / LL

HOUSE BILL NO. 991

Originated in House _____ Clerk

HOUSE BILL NO. 991

AN ACT TO ENACT THE "LOCAL GOVERNMENT DEBT COLLECTION SETOFF ACT"; TO AUTHORIZE COUNTIES AND MUNICIPALITIES TO SUBMIT CERTAIN DEBTS OWED TO THEM TO THE DEPARTMENT OF REVENUE FOR COLLECTION THROUGH A SETOFF AGAINST THE DEBTORS' MISSISSIPPI INCOME TAX REFUND; TO PROVIDE THAT THE COUNTIES AND MUNICIPALITIES SHALL UTILIZE THE MISSISSIPPI ASSOCIATION OF SUPERVISORS OR THE MISSISSIPPI MUNICIPAL LEAGUE, AS APPROPRIATE, AS THEIR AGENTS IN UTILIZING THIS PROCEDURE; TO PROVIDE THE AMOUNT OF THE DEBT AND INCOME TAX REFUNDS TO WHICH THIS ACT APPLIES; TO PROVIDE FOR NOTICE TO THE DEBTOR AND AN OPPORTUNITY FOR THE DEBTOR TO CONTEST AND APPEAL THE SETOFF; TO PROVIDE FOR THE DUTIES OF THE DEPARTMENT OF REVENUE UNDER THIS ACT; TO IMPOSE A COLLECTION ASSISTANCE FEE ON EACH DEBT COLLECTED UNDER THIS ACT; TO AUTHORIZE THE EXCHANGE OF INFORMATION BETWEEN THE DEPARTMENT OF REVENUE, LOCAL GOVERNMENTS AND THEIR MEMBER ORGANIZATIONS THAT IS NECESSARY TO ACCOMPLISH AND EFFECTUATE THE INTENT OF THIS ACT; TO PROVIDE THAT INFORMATION OBTAINED FROM THE DEPARTMENT OF REVENUE SHALL RETAIN ITS CONFIDENTIALITY AND TO PROVIDE PENALTIES FOR THE UNLAWFUL DISCLOSURE OF SUCH INFORMATION; TO AMEND SECTION 27-7-83, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. Sections 1 through 12 of this act shall be known as the "Local Government Debt Collection Setoff Act."

SECTION 2. The purpose of Sections 1 through 12 of this act is to establish as public policy that all claimant local

governments and the Department of Revenue shall cooperate in identifying debtors who owe money to local governments and who qualify for refunds from the Department of Revenue. It is also the intent of Sections 1 through 12 of this act that procedures be established for setting off against any refund the sum of any debt owed to a local government. Furthermore, it is the legislative intent that Sections 1 through 12 of this act be liberally construed so as to effectuate these purposes as far as legally and practically possible.

SECTION 3. As used in Sections 1 through 12 of this act:

(a) "Claimant local government" means counties and municipalities acting through their nonprofit member organizations with respect to the collection of any debt owed and finalized by law, ordinance, order or resolution.

(b) "Debtor" means any person owing a debt to any claimant local government.

(c) "Debt" means any liquidated sum due and owing to any claimant local government which has accrued through contract, subrogation, tort, justice or municipal court conviction or any other debt regardless of whether there is an outstanding judgment for the sum.

(d) "Department" means the Mississippi Department of Revenue.

(e) "Local government" means a county or municipality.

(f) "Member organization" means the Mississippi Association of Supervisors for counties, the Mississippi Municipal League for municipalities, or entities established through or contracted by these member organizations for the purpose of facilitating debt collection under Sections 1 through 12 of this act.

(g) "Net proceeds collected" means gross proceeds collected through setoff against a debtor's refund less the collection assistance fees authorized in Sections 1 through 12 of this act.

(h) "Person" means any individual, firm, partnership, association, trustee, receiver, assignee, corporation, entity, limited liability company, utility or joint venture.

(i) "Refund" means the Mississippi income tax refund which the department determines to be due a debtor.

(j) "Setoff" means the department's legal right to reduce the debtor's claim to a Mississippi income tax refund from the department by a debt the claimant local government properly establishes under Sections 1 through 12 of this act which is owed by the debtor.

SECTION 4. (1) The collection remedy in Sections 1 through 12 of this act is in addition to and not in substitution for any other remedy available by law.

(2) A local government may submit a debt owed to it for collection under Sections 1 through 12 of this act. A local

government that decides to submit a debt owed to it for collection under Sections 1 through 12 of this act shall establish the debt by following the procedures set forth in Section 6 of this act and shall submit the debt through a member organization.

SECTION 5. Sections 1 through 12 of this act only apply to a debt that is at least Fifty Dollars ($50.00) and refunds to which the debtor is entitled of at least Fifty Dollars ($50.00). Different types of debts under Fifty Dollars ($50.00) may be combined to satisfy the debt threshold if they are owed by the same debtor.

SECTION 6. (1) A local government may not submit a debt for collection under Sections 1 through 12 of this act until it has given the notice required by this section and the claim has been finally determined as provided in this section.

(2) A local government, or its member organization on its behalf, shall send written notice to a debtor that the local government intends to submit the debt owed by the debtor for collection by setoff. The notice shall explain the basis for the local government's claim to the debt, that the local government intends to apply the debtor's refund against the debt, and that a total collection assistance fee of twenty-five percent (25%) shall be added to the debt if it is submitted for setoff. The notice shall also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing with the local government, shall state the time limits and procedures for

requesting a hearing and shall state that the failure to request a hearing within the required time will result in setoff of the debt.

(3) A debtor who decides to contest a proposed setoff shall file a written request for a hearing with the local government within thirty (30) days after the date the local government mails a notice of the proposed action to the debtor. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed as required in the notice provided by the local government. The governing body of the local government or a person designated by the governing body shall hold the hearing. In a hearing under this section, any civil or criminal issue that has been litigated in a court proceeding cannot be reconsidered.

(4) A decision made after a hearing under Sections 1 through 12 of this act shall determine whether a debt is owed to the local government and the amount of the debt.

(5) Appeals from hearings held under Sections 1 through 12 of this act shall be made to the circuit court of the county in which the debtor resides and shall be reviewed on the administrative record made at the hearing before the local government. The standard of review of such decisions shall be that established by Mississippi law pertaining to the review of all other administrative decisions made by political subdivisions.

SECTION 7. (1) A claimant local government, or its member organization on its behalf, seeking to collect a debt through setoff shall notify the department in writing and supply information necessary to identify the debtor whose refund is sought to be setoff. The local government, or its member organization, shall notify the department in writing within sixty (60) days of when a debt of which the department has previously been noticed has been paid or is no longer owed to it.

(2) The department, upon receipt of notification, shall determine each year whether the debtor to the claimant local government is entitled to a refund of at least Fifty Dollars ($50.00) from the department. Upon determination by the department that a debtor specified by a claimant local government qualifies for such a refund, the department shall set off the debt against the refund to which the debtor would otherwise be entitled and shall refund any remaining balance to the debtor. The department shall mail the debtor written notice that the setoff has occurred and shall credit the net proceeds collected to the claimant local government, after deducting the total collection assistance fee owed to the department and the member organization.

SECTION 8. When there are multiple claims by two (2) or more member organizations submitting debts on behalf of local governments, the claims have priority based on the date each member organization filed the claim with the department. When there are multiple claims among local governments whose debts are

submitted by the same member organization, the claims have priority based on the date each local government requested the member organization to submit the debts on its behalf. A claim submitted under Sections 27-7-501 through 27-7-519 shall have priority over a claim submitted under Sections 1 through 12 of this act.

SECTION 9. To recover the costs incurred by the department and the member organization in collecting debts under Sections 1 through 12 of this act, a total collection assistance fee of twenty-five percent (25%) shall be imposed on each debt collected through setoff. The department shall collect this fee as part of the debt and retain five percent (5%) for its administrative costs. The additional twenty percent (20%) shall be remitted to the member organization as payment for collection services rendered on behalf of its claimant local governments.

SECTION 10. (1) Along with the transmittal of the net proceeds collected on behalf of the claimant local government, the department shall provide the local government with an accounting of the setoffs for which payment is being made. The accounting shall, whenever possible, include the full names of the debtors, the debtor's social security numbers or federal tax identification numbers, the gross proceeds collected per setoff, the net proceeds collected per setoff and the collection assistance fees added to the debt collected per setoff.

(2) Upon receipt by a claimant local government of net proceeds collected on the claimant local government's behalf by the department, the claimant local government shall credit the debtor's obligation with the net proceeds collected.

SECTION 11. (1) The department, the local government or its member organization on its behalf may exchange information necessary to accomplish and effectuate the intent of Sections 1 through 12 of this act.

(2) The information obtained by a local government or its member organization in accordance with the provisions of Sections 1 through 12 of this act shall retain its confidentiality and shall only be used by the local government or member organization in the pursuit of its debt collection duties and practices; and any employee or former employee of any local government or its member organization who unlawfully discloses any such information for any other purpose, except as otherwise specifically authorized by law, shall be subject to the same penalties specified by law for unauthorized disclosure of confidential information by an agency or employee of the department.

SECTION 12. The department shall promulgate rules and regulations pursuant to the Mississippi Administrative Procedures Act which are necessary to implement and carry out its duties and functions under Sections 1 through 12 of this act. Local governments may also promulgate rules and regulations necessary

for the local administration of their authority granted under Sections 1 through 12 of this act.

SECTION 13. 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, as otherwise authorized by this section * * *, as authorized in Section 27-4-3 or as authorized under Section 11 of this act, 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 or claimant local government seeking to collect a debt through the setoff procedure established in Sections 27-7-701 through 27-7-713 * * *, Sections 27-7-501 through 27-7-519 and/or Sections 1 through 12 of this act, as the case may be, 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) Information required by the University Research Center to prepare the analyses required by Sections 57-13-101 through 57-13-109 shall be furnished to the University Research Center upon request. It shall be unlawful for any officer or employee of the University Research Center to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the center from the Department of Revenue other than as may be required by Sections 57-13-101 through 57-13-109 in an analysis prepared pursuant to Sections 57-13-101 through 57-13-109.

(7) Information required by the Mississippi Development Authority to prepare the reports required by Section 57-1-12.2 shall be furnished to the Mississippi Development Authority upon request. It shall be unlawful for any officer or employee of the Mississippi Development Authority to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the Mississippi Development Authority from the Department of Revenue other than as may be required by Section 57-1-12.2 in a report prepared pursuant to Section 57-1-12.2.

(8) Information necessary to comply with Chapter 13, Title 85, may be furnished to financial institutions. It shall be unlawful for any officer or employee of the financial institution to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the financial institution from the Department of Revenue other than as may be authorized by Chapter 13, Title 85.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) 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 or the United States.

(14) 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 14. This act shall take effect and be in force from and after January 1, 2019.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 6, 2019

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 7, 2019

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

March 19, 2019 9:41 AM