

By: Representative Smith

To: Ways and Means

HOUSE BILL NO. 991

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

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

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

25 **SECTION 2.** The purpose of Sections 1 through 12 of this act
 26 is to establish as public policy that all claimant local
 27 governments and the Department of Revenue shall cooperate in



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

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

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

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

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

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

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

51 (f) "Member organization" means the Mississippi
52 Association of Supervisors for counties, the Mississippi Municipal



53 League for municipalities, or entities established through or
54 contracted by these member organizations for the purpose of
55 facilitating debt collection under Sections 1 through 12 of this
56 act.

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

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

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

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

71 **SECTION 4.** (1) The collection remedy in Sections 1 through
72 12 of this act is in addition to and not in substitution for any
73 other remedy available by law.

74 (2) A local government may submit a debt owed to it for
75 collection under Sections 1 through 12 of this act. A local
76 government that decides to submit a debt owed to it for collection
77 under Sections 1 through 12 of this act shall establish the debt



78 by following the procedures set forth in Section 6 of this act and
79 shall submit the debt through a member organization.

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

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

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



102 hearing within the required time will result in setoff of the
103 debt.

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

115 (4) A decision made after a hearing under Sections 1 through
116 12 of this act shall determine whether a debt is owed to the local
117 government and the amount of the debt.

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

125 **SECTION 7.** (1) A claimant local government, or its member
126 organization on its behalf, seeking to collect a debt through



127 setoff shall notify the department in writing and supply
128 information necessary to identify the debtor whose refund is
129 sought to be setoff. The local government, or its member
130 organization, shall notify the department in writing within sixty
131 (60) days of when a debt of which the department has previously
132 been noticed has been paid or is no longer owed to it.

133 (2) The department, upon receipt of notification, shall
134 determine each year whether the debtor to the claimant local
135 government is entitled to a refund of at least Fifty Dollars
136 (\$50.00) from the department. Upon determination by the
137 department that a debtor specified by a claimant local government
138 qualifies for such a refund, the department shall set off the debt
139 against the refund to which the debtor would otherwise be entitled
140 and shall refund any remaining balance to the debtor. The
141 department shall mail the debtor written notice that the setoff
142 has occurred and shall credit the net proceeds collected to the
143 claimant local government, after deducting the total collection
144 assistance fee owed to the department and the member organization.

145 **SECTION 8.** When there are multiple claims by two (2) or more
146 member organizations submitting debts on behalf of local
147 governments, the claims have priority based on the date each
148 member organization filed the claim with the department. When
149 there are multiple claims among local governments whose debts are
150 submitted by the same member organization, the claims have
151 priority based on the date each local government requested the



152 member organization to submit the debts on its behalf. A claim
153 submitted under Sections 27-7-501 through 27-7-519 shall have
154 priority over a claim submitted under Sections 1 through 12 of
155 this act.

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

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

174 (2) Upon receipt by a claimant local government of net
175 proceeds collected on the claimant local government's behalf by



176 the department, the claimant local government shall credit the
177 debtor's obligation with the net proceeds collected.

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

182 (2) The information obtained by a local government or its
183 member organization in accordance with the provisions of Sections
184 1 through 12 of this act shall retain its confidentiality and
185 shall only be used by the local government or member organization
186 in the pursuit of its debt collection duties and practices; and
187 any employee or former employee of any local government or its
188 member organization who unlawfully discloses any such information
189 for any other purpose, except as otherwise specifically authorized
190 by law, shall be subject to the same penalties specified by law
191 for unauthorized disclosure of confidential information by an
192 agency or employee of the department.

193 **SECTION 12.** The department shall promulgate rules and
194 regulations pursuant to the Mississippi Administrative Procedures
195 Act which are necessary to implement and carry out its duties and
196 functions under Sections 1 through 12 of this act. Local
197 governments may also promulgate rules and regulations necessary
198 for the local administration of their authority granted under
199 Sections 1 through 12 of this act.



200 **SECTION 13.** Section 27-7-83, Mississippi Code of 1972, is
201 amended as follows:

202 27-7-83. (1) Returns and return information filed or
203 furnished under the provisions of this chapter shall be
204 confidential, and except in accordance with proper judicial order,
205 as otherwise authorized by this section * * *, as authorized in
206 Section 27-4-3 or as authorized under Section 11 of this act, it
207 shall be unlawful for the Commissioner of Revenue or any deputy,
208 agent, clerk or other officer or employee of the Department of
209 Revenue or the Mississippi Department of Information Technology
210 Services, or any former employee thereof, to divulge or make known
211 in any manner the amount of income or any particulars set forth or
212 disclosed in any report or return required. The provisions of
213 this section shall apply fully to any federal return, a copy of
214 any portion of a federal return, or any information reflected on a
215 federal return which is attached to or made a part of the state
216 tax return. Likewise, the provisions of this section shall apply
217 to any federal return or portion thereof, or to any federal return
218 information data which is acquired from the Internal Revenue
219 Service for state tax administration purposes pursuant to the
220 Federal-State Exchange Program cited at Section 6103, Federal
221 Internal Revenue Code. The term "proper judicial order" as used
222 in this section shall not include subpoenas or subpoenas duces
223 tecum, but shall include only those orders entered by a court of
224 record in this state after furnishing notice and a hearing to the



225 taxpayer and the Department of Revenue. The court shall not
226 authorize the furnishing of such information unless it is
227 satisfied that the information is needed to pursue pending
228 litigation wherein the return itself is in issue, or the judge is
229 satisfied that the need for furnishing the information outweighs
230 the rights of the taxpayer to have such information secreted.

231 (2) Returns and return information with respect to taxes
232 imposed by this chapter shall be open to inspection by or
233 disclosure to the Commissioner of the Internal Revenue Service of
234 the United States, or the proper officer of any state imposing an
235 income tax similar to that imposed by this chapter, or the
236 authorized representatives of such agencies. Such inspection
237 shall be permitted, or such disclosure made, only upon written
238 request by the head of such agencies, or the district director in
239 the case of the Internal Revenue Service, and only to the
240 representatives of such agencies designated in a written statement
241 to the Commissioner of Revenue as the individuals who are to
242 inspect or to receive the return or return information on behalf
243 of such agency. The Commissioner of Revenue is authorized to
244 enter into agreements with the Internal Revenue Service and with
245 other states for the exchange of returns and return information
246 data, or the disclosure of returns or return information data to
247 such agencies, only to the extent that the statutes of the United
248 States or of such other state, as the case may be, grant
249 substantially similar privileges to the proper officer of this



250 state charged with the administration of the tax laws of this
251 state.

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

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

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

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

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

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

273 (vi) In the case of the return of a trust, the
274 trustee or trustees, jointly or separately, and any beneficiary of



275 such trust, but only to the extent that such beneficiary has a
276 material interest which will be affected by information contained
277 therein;

278 (vii) In the case of the return of an individual
279 or a return filed jointly, any claimant agency or claimant local
280 government seeking to collect a debt through the setoff procedure
281 established in Sections 27-7-701 through 27-7-713 * * *, Sections
282 27-7-501 through 27-7-519 and/or Sections 1 through 12 of this
283 act, as the case may be, from an individual with respect to whom
284 the return is filed.

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

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

297 (d) Any return to which this section applies shall,
298 upon written request, also be open to inspection by or disclosure
299 to the attorney-in-fact duly authorized in writing by any of the



300 persons described in paragraph (a) of this subsection to inspect
301 the return or receive the information on his behalf, subject to
302 the conditions provided in paragraph (a).

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

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

313 (5) Officers and employees of the Mississippi Development
314 Authority who execute a confidentiality agreement with the
315 Department of Revenue shall be authorized to discuss and examine
316 information to which this section applies at the offices of the
317 Mississippi Department of Revenue. This disclosure is limited to
318 information necessary to properly administer the programs under
319 the jurisdiction of the Mississippi Development Authority. The
320 Department of Revenue is authorized to disclose to officers and
321 employees of the Mississippi Development Authority who execute a
322 confidentiality agreement the information necessary under the
323 circumstances. The same prohibitions against disclosure which



324 apply to the Department of Revenue shall apply to the officers or
325 employees of the Mississippi Development Authority.

326 (6) Information required by the University Research Center
327 to prepare the analyses required by Sections 57-13-101 through
328 57-13-109 shall be furnished to the University Research Center
329 upon request. It shall be unlawful for any officer or employee of
330 the University Research Center to divulge or make known in any
331 manner the amount of income or any particulars set forth or
332 disclosed in any information received by the center from the
333 Department of Revenue other than as may be required by Sections
334 57-13-101 through 57-13-109 in an analysis prepared pursuant to
335 Sections 57-13-101 through 57-13-109.

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

346 (8) Information necessary to comply with Chapter 13, Title
347 85, may be furnished to financial institutions. It shall be
348 unlawful for any officer or employee of the financial institution



349 to divulge or make known in any manner the amount of income or any
350 particulars set forth or disclosed in any information received by
351 the financial institution from the Department of Revenue other
352 than as may be authorized by Chapter 13, Title 85.

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

361 (10) Nothing in this section shall prohibit the commissioner
362 from making available information necessary to recover taxes owing
363 the state pursuant to the authority granted in Section 27-75-16.

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

369 (12) The Department of Revenue is authorized to disclose to
370 the Child Support Unit and to the Fraud Investigation Unit of the
371 Department of Human Services without the need for a subpoena or
372 proper judicial order the name, address, social security number,
373 amount of income, source of income, assets and other relevant



374 information, records and tax forms for individuals who are
375 delinquent in the payment of any child support as defined in
376 Section 93-11-101 or who are under investigation for fraud or
377 abuse of any state or federal program or statute as provided in
378 Section 43-1-23.

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

383 (14) Nothing in this section shall prohibit the department
384 from making available information that is necessary to be
385 disclosed for the administration and enforcement of Section
386 27-7-87.

387 **SECTION 14.** This act shall take effect and be in force from
388 and after January 1, 2019.

