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New Mississippi Law Modernizes The Statute of Limitations for Audits of Tax Returns

Mississippi Governor Phil Bryant recently signed into law a bill enacted during the 2013 regular session of the Mississippi Legislature. This new law improves and modernizes the Statute of Limitations that applies to the examination of tax returns filed with

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the Mississippi Department of Revenue.

Under prior law, the Department of Revenue generally had three years from the date a tax return was filed in order to commence an audit. However, if the Department of Revenue notified a taxpayer by certified mail that its return filed within such three year period was going to be audited, then the statute of limitations for the examination of that return remained opened indefinitely, unless the taxpayer could prove that the Department of Revenue was failing to conduct the audit “with reasonable promptness and diligence.” It had become a fairly common practice for the Department of Revenue to allow audits to lay dormant for a year or more, while failing to acknowledge that the audit was not being conducted with reasonable promptness and diligence. Understandably, few taxpayers were willing to litigate this matter in the face of such a nebulous standard, thus creating an environment where audits could (and did) last for years with no firm expectation or requirement for closure.

House Bill 892 requires, as a general rule, the Department of Revenue to complete the audit of a tax return within one year after the expiration of the three year examination period. As is the case with the statute of limitations that applies to most federal taxes, the Department of Revenue and the taxpayer may mutually agree, prior to the expiration of the statute of limitations, to extend the time period for the examination of any tax return.

The three year examination period (plus the additional one year) provided in House Bill 892 will not apply for any tax period for which a taxpayer fails to file a Mississippi tax return or files a false or fraudulent Mississippi tax return. If a taxpayer requests an extension of time to file a Mississippi tax return and the request is granted, the statute of limitations for that return is extended accordingly.

The new law becomes effective January 1, 2013, and presumably will only apply to any audits commencing on or after that date. Thus, any audits currently underway are not impacted by this change in the law.

The changes made by House Bill 892 bring Mississippi in line with the vast majority of states that generally follow the statute of

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limitations that applies to federal tax returns. Mississippi taxpayers will benefit from greater certainty regarding the expiration of the statute of limitations on tax returns. Accordingly, this is a welcomed change in an area of Mississippi tax law that was in dire need of improvement.

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