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THE END OF INDEFINITE AUDITS: NEW MISSISSIPPI LAW PLACES STATUTE OF LIMITATIONS ON TAX DETERMINATIONS

Mississippi House Bill 892 ("H.B. 892") was signed into law by Gov. Phil Bryant on March 27, 2013, amending Mississippi Code sections 27-7-49, 27-13-49, and 27-65-49. Specifically, H.B. 892 places a limitation on the period that the Mississippi Department of Revenue (the "MDOR") can audit and determine a taxpayer's income, franchise, and/or sales tax liability.

Prior to the amendment, Mississippi law required that an examination of a return, an audit, <u>commence</u> no later than three years after the later of the due date of a return or the filing date, but it left the time for determining the tax open-ended. Instead, prior law only required that the MDOR's determination "be made with reasonable promptness and diligence." As a result of this language, where the MDOR issued a notice to a taxpayer during the three-year examinations period, the audit could be kept open <u>indefinitely</u>.

In order to address the uncertainty taxpayers faced from potential indefinitely open audits, H.B. 892 places a three-year statute of limitations to begin an examination of a taxpayer's returns from either the due date of the tax or the date the tax return was filed, whichever is later. What is more, coupled with this three-year period to initiate an audit, any determination of tax due by the MDOR must be made no later than one year after the expiration of the three-year examination period. Therefore, under H.B. 892, the MDOR's audit must be *completed* within a maximum of four years.

The three-year and one-year limitations will not apply in a few instances. In particular, the three-year and one-year time limitations do not apply where a taxpayer has either failed to file a tax return or has filed a false or fraudulent tax return. Similarly, H.B. 892 also provides a mechanism for audits by the MDOR to be kept open by the taxpayer. That is, both the three-year and one-year statute of limitations may be extended where (1) a taxpayer requests an extension to file a return or (2) the taxpayer and MDOR, prior to the expiration of the three-year period, enter into a written agreement to extend the period for examination.

In addition, H.B. 892 requires that taxpayers keep and maintain an accurate and complete set of records and other information sufficient to allow the MDOR to determine the correct amount of tax due. Failure of the taxpayer to maintain such records for the open audit periods, or other refusal or delay, will result in an assessment by the MDOR based on the information available, which shall be prima facie correct.

Finally, with respect to sales tax, H.B. 892 provides that the Commissioner of the MDOR (the "Commissioner") is estopped from collecting any additional tax found due where the taxpayer had reported and paid tax in accordance with a method used during a prior period that had been audited by the Commissioner and not found to result in any additional tax due. Therefore, the Commissioner is bound by a previous interpretation until (1) the Commissioner, or his agent, notifies the taxpayer that his or her interpretation has changed or (2) there has been a statutory or regulatory change.

Clearly the passage of H.B. 892 is a victory for Mississippi taxpayers and removes a competitive disadvantage to the state in attracting new businesses and retaining existing business. This change aligns Mississippi with most other states, providing it with a true statute of limitations for audit periods and the time for determination of tax. As such, taxpayers are





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no longer subject to MDOR's discretion in determining what it deems to be "reasonably prompt" in making tax determinations. The new limitations are effective for tax periods as of January 1, 2013.

Jones Walker LLP, through its Government Relations and State and Local Tax practices, worked closely with the Mississippi Economic Council and the Council on State Taxation on the passage of H.B. 892 in the Mississippi Legislature.

A copy of H.B. 892, approved by the governor, can be read <u>here</u>.

- Robert E. Box, Jr. and Justin B. Stone





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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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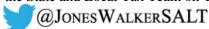
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