

By: Representatives Moody, McCoy

To: Ways and Means

HOUSE BILL NO. 1379
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 27-7-309, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT ANY EMPLOYER HAVING AN AVERAGE MONTHLY WITHHOLDING
3 TAX LIABILITY OF AT LEAST \$20,000.00 FOR THE PRECEDING TAXABLE
4 YEAR SHALL PAY TO THE STATE TAX COMMISSION ON OR BEFORE JUNE 25,
5 2003, AND ON OR BEFORE THE TWENTY-FIFTH DAY OF JUNE OF EACH
6 SUCCEEDING YEAR THEREAFTER, AN AMOUNT EQUAL TO AT LEAST
7 SEVENTY-FIVE PERCENT OF SUCH EMPLOYER'S ESTIMATED WITHHOLDING TAX
8 LIABILITY FOR THE MONTH OF JUNE OF THE CURRENT TAXABLE YEAR; TO
9 AMEND SECTION 27-65-33, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
10 ANY TAXPAYER REQUIRED TO COLLECT SALES TAXES AND HAVING AN AVERAGE
11 MONTHLY SALES TAX LIABILITY OF AT LEAST \$20,000.00 FOR THE
12 PRECEDING CALENDAR YEAR SHALL PAY TO THE STATE TAX COMMISSION ON
13 OR BEFORE JUNE 25, 2003, AND ON OR BEFORE THE TWENTY-FIFTH DAY OF
14 JUNE OF EACH SUCCEEDING YEAR THEREAFTER, AN AMOUNT EQUAL TO AT
15 LEAST SEVENTY-FIVE PERCENT OF SUCH TAXPAYER'S ESTIMATED SALES TAX
16 LIABILITY FOR THE MONTH OF JUNE OF THE CURRENT CALENDAR YEAR; TO
17 AMEND SECTION 27-67-17, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
18 ANY TAXPAYER REQUIRED TO COLLECT USE TAXES AND HAVING AN AVERAGE
19 MONTHLY USE TAX LIABILITY OF AT LEAST \$20,000.00 FOR THE PRECEDING
20 CALENDAR YEAR SHALL PAY TO THE STATE TAX COMMISSION ON OR BEFORE
21 JUNE 25, 2003, AND ON OR BEFORE THE TWENTY-FIFTH DAY OF JUNE OF
22 EACH SUCCEEDING YEAR THEREAFTER, AN AMOUNT EQUAL TO AT LEAST
23 SEVENTY-FIVE PERCENT OF SUCH TAXPAYER'S ESTIMATED USE TAX
24 LIABILITY FOR THE MONTH OF JUNE OF THE CURRENT CALENDAR YEAR; TO
25 PROVIDE THAT SUCH PAYMENTS OF ESTIMATED SALES TAX OR USE TAX
26 LIABILITY BY A TAXPAYER SHALL NOT BE CONSIDERED TO BE COLLECTED
27 FOR THE PURPOSES OF ANY SALES TAX OR USE TAX DIVERSIONS REQUIRED
28 BY LAW UNTIL THE TAXPAYER FILES A RETURN FOR THE ACTUAL SALES
29 TAXES OR USE TAXES COLLECTED DURING THE MONTH OF JUNE; TO AMEND
30 SECTION 27-15-107, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FOR
31 THE PURPOSES OF FILING QUARTERLY REPORTS AND PAYMENTS OF INSURANCE
32 PREMIUM TAX, FOR THE PERIOD OF APRIL 1 THROUGH JUNE 30, 2003, AND
33 FOR THE PERIOD APRIL 1 THROUGH JUNE 30 OF EACH SUCCEEDING YEAR
34 THEREAFTER, THE REPORT AND PAYMENT FOR APRIL AND MAY ARE DUE BY
35 JUNE 30, AND THE REPORT AND PAYMENT FOR JUNE ARE DUE BY JULY 20;
36 TO PROVIDE THAT CERTAIN PAYMENTS MADE PURSUANT TO THIS ACT SHALL
37 BE DEPOSITED INTO THE BUDGET CONTINGENCY FUND; TO AUTHORIZE AND
38 DIRECT THE STATE TREASURER TO BORROW FUNDS FROM THE WORKING
39 CASH-STABILIZATION RESERVE FUND OR FROM SPECIAL FUNDS IN THE STATE
40 TREASURY, OR BOTH, TO OFFSET ANY TEMPORARY CASH FLOW DEFICIENCIES
41 IN THE BUDGET CONTINGENCY FUND REGARDING BUDGET CONTINGENCY FUND
42 MONIES GENERATED UNDER THIS ACT; TO LIMIT THE AMOUNT OF MONEY THAT
43 MAY BE BORROWED FOR SUCH PURPOSES; TO PROVIDE THAT THE STATE
44 TREASURER SHALL REIMBURSE, FROM BUDGET CONTINGENCY FUND MONIES
45 GENERATED UNDER THIS ACT, THE WORKING CASH-STABILIZATION RESERVE
46 FUND OR SPECIAL FUNDS IN THE STATE TREASURY, OR BOTH, FOR ALL SUMS
47 BORROWED FOR SUCH TEMPORARY CASH FLOW DEFICIENCY PURPOSES; AND FOR
48 RELATED PURPOSES.

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



50 **SECTION 1.** Section 27-7-309, Mississippi Code of 1972, is
51 amended as follows:

52 27-7-309. (1) (a) Except as otherwise provided in this
53 subsection, every employer required to deduct and withhold from
54 wages under this article shall, for each calendar quarter, on or
55 before the fifteenth day of the month following the close of such
56 calendar quarter, file a withholding return as prescribed by the
57 commissioner and pay over to the commissioner the full amount
58 required to be deducted and withheld from wages by such employer
59 for the calendar quarter. Provided that the commissioner may, by
60 regulation, provide that every such employer shall, on or before
61 the fifteenth day of each month, pay over to the commissioner or a
62 depository designated by the commissioner, the amount required to
63 be deducted and withheld by such employer for the preceding month,
64 if such amount is One Hundred Dollars (\$100.00) or more. Returns
65 and payments placed in the mail must be postmarked by the due date
66 in order to be timely filed, except when the due date falls on a
67 weekend or holiday, returns and payments placed in the mail must
68 be postmarked by the first working day following the due date in
69 order to be considered timely filed.

70 (b) An employer having an average monthly withholding
71 tax liability of at least Twenty Thousand Dollars (\$20,000.00) for
72 the preceding calendar year shall pay to the State Tax Commission
73 on or before June 25, 2003, and on or before the twenty-fifth day
74 of June of each succeeding year thereafter, an amount equal to at
75 least seventy-five percent (75%) of such employer's estimated
76 withholding tax liability for the month of June of the current
77 taxable year, or an amount equal to at least seventy-five percent
78 (75%) of the employer's withholding tax liability for the month of
79 June of the preceding taxable year. Payments required to be made
80 under this paragraph (b) must be received by the State Tax
81 Commission no later than June 25 in order to be considered timely
82 made. An employer that fails to comply with the requirements of



83 this paragraph (b) may be assessed a penalty in an amount equal to
84 ten percent (10%) of the employer's actual withholding tax
85 liability for the month of June for which the estimated payment
86 was required to be made. This paragraph (b) shall not apply to
87 any agency, department or instrumentality of the United States,
88 any agency, department, institution, instrumentality or political
89 subdivision of the State of Mississippi, or any agency,
90 department, institution or instrumentality of any political
91 subdivision of the State of Mississippi. Payments made pursuant
92 to this paragraph (b) for the month of June 2003, less One Hundred
93 Thousand Dollars (\$100,000.00) thereof to be retained by the State
94 Tax Commission to defray the costs of collection, shall be
95 deposited by the State Tax Commission into the Budget Contingency
96 Fund created under Section 27-103-301, and payments made pursuant
97 to this paragraph (b) for the month of June of 2004, and each
98 succeeding year thereafter, less One Hundred Thousand Dollars
99 (\$100,000.00) thereof to be retained by the State Tax Commission
100 each year to defray the costs of collection, shall be deposited by
101 the State Tax Commission into the State General Fund.

102 (c) The commissioner may promulgate rules and
103 regulations to require or permit filing periods of any duration,
104 in lieu of monthly or quarterly filing periods, for any taxpayer
105 or group thereof.

106 (2) Notwithstanding any of the other provisions of this
107 section, all transient employers and all employers engaged in any
108 business which is seasonal shall make return and pay over to the
109 commissioner on a monthly basis, the full amounts required to be
110 deducted and withheld from the wages by such employer for the
111 calendar month. Such returns and payments to the commissioner by
112 such employers shall be made on or before the fifteenth day of the
113 month following the month for which such amounts were deducted and
114 withheld from the wages of his employees. The commissioner shall



115 have the authority to issue reasonable rules and regulations
116 designating or classifying said transient and seasonal employers.

117 (3) If the commissioner, in any case, has justifiable reason
118 to believe that the collection of funds required to be withheld by
119 any employer as provided herein is in jeopardy, he may require the
120 employer to file a return and pay such amount required to be
121 withheld at any time.

122 (4) Every employer who fails to withhold or pay to the
123 commissioner any sums required by this article to be withheld and
124 paid, shall be personally and individually liable therefor, except
125 as provided in Section 27-7-307; and any sum or sums withheld in
126 accordance with the provisions of this article shall be deemed to
127 be held in trust for the State of Mississippi and shall be
128 recorded by the employer in a ledger account so as to clearly
129 indicate the amount of tax withheld and that the amount is the
130 property of the State of Mississippi.

131 (5) Once an employer has become liable to a quarterly return
132 of withholding, he must continue to file a quarterly report, even
133 though no tax has been withheld, until such time as he notifies
134 the commissioner, in writing, that he no longer has employees or
135 that he is no longer liable for such quarterly returns.

136 (6) Once an employer has become liable to a monthly return
137 of withholding, he must continue to file a monthly report, even
138 though no tax has been withheld until such time as he notifies the
139 commissioner, in writing, that he no longer has employees or that
140 he is no longer liable for such monthly returns.

141 (7) Magnetic media reporting may be required in a manner to
142 be determined by the commissioner.

143 **SECTION 2.** Section 27-65-33, Mississippi Code of 1972, is
144 amended as follows:

145 27-65-33. (1) Except as otherwise provided in this section,
146 the taxes levied by this chapter shall be due and payable on or
147 before the twentieth day of the month next succeeding the month in



148 which the tax accrues, except as otherwise provided. Returns and
149 payments placed in the mail must be postmarked by the due date in
150 order to be considered timely filed, except when the due date
151 falls on a weekend or holiday, returns and payments placed in the
152 mail must be postmarked by the first working day following the due
153 date in order to be considered timely filed. The taxpayer shall
154 make a return showing the gross proceeds of sales or the gross
155 income of the business, and any and all allowable deductions, or
156 exempt sales, and compute the tax due for the period covered.

157 As compensation for collecting sales and use taxes, complying
158 fully with the applicable statutes, filing returns and supplements
159 thereto and paying all taxes by the twentieth of the month
160 following the period covered, the taxpayer may discount and retain
161 two percent (2%) of the liability on each return subject to the
162 following limitations:

163 (a) The compensation or discount shall not apply to
164 taxes levied under the provisions of Sections 27-65-19 and
165 27-65-21, or on charges for ginning cotton under Section 27-65-23.

166 (b) The compensation or discount shall not apply to
167 taxes collected by a county official or state agency.

168 (c) The compensation or discount shall not exceed Fifty
169 Dollars (\$50.00) per month, or Six Hundred Dollars (\$600.00) per
170 calendar year, per business location on each state sales tax
171 return, or on each use tax return.

172 (d) The compensation or discount shall not apply to any
173 wholesale tax, the rate of which is equal to or greater than the
174 tax rate applicable to retail sales of the same property or
175 service. The retailer of such items shall be entitled to the
176 compensation based on the tax computed on retail sales before
177 application of the credit for any tax paid to the wholesaler,
178 jobber, or other person.



179 (e) The compensation or discount allowed and taken for
180 any filing period may be reassessed and collected when an audit of
181 a taxpayer's records reveals a tax deficiency for that period.

182 (2) A taxpayer required to collect sales taxes under this
183 chapter and having an average monthly sales tax liability of at
184 least Twenty Thousand Dollars (\$20,000.00) for the preceding
185 calendar year shall pay to the State Tax Commission on or before
186 June 25, 2003, and on or before the twenty-fifth day of June of
187 each succeeding year thereafter, an amount equal to at least
188 seventy-five percent (75%) of such taxpayer's estimated sales tax
189 liability for the month of June of the current calendar year, or
190 an amount equal to at least seventy-five percent (75%) of the
191 taxpayer's sales tax liability for the month of June of the
192 preceding calendar year. Payments required to be made under this
193 subsection must be received by the State Tax Commission no later
194 than June 25 in order to be considered timely made. A taxpayer
195 that fails to comply with the requirements of this subsection may
196 be assessed a penalty in an amount equal to ten percent (10%) of
197 the taxpayer's actual sales tax liability for the month of June
198 for which the estimated payment was required to be made. Payments
199 made by a taxpayer under this subsection shall not be considered
200 to be collected for the purposes of any sales tax diversions
201 required by law until the taxpayer files a return for the actual
202 sales taxes collected during the month of June. This subsection
203 shall not apply to any agency, department or instrumentality of
204 the United States, any agency, department, institution,
205 instrumentality or political subdivision of the State of
206 Mississippi, or any agency, department, institution or
207 instrumentality of any political subdivision of the State of
208 Mississippi. Payments made pursuant to this subsection for the
209 month of June 2003, shall be deposited by the State Tax Commission
210 into the Budget Contingency Fund created under Section 27-103-301,
211 and payments made pursuant to this subsection for the month of



212 June of 2004, and each succeeding year thereafter, shall be
213 deposited by the State Tax Commission into the State General Fund.

214 (3) All returns shall be sworn to by the taxpayer, if made
215 by an individual, or by the president, vice president, secretary
216 or treasurer of a corporation, or authorized agent, if made on
217 behalf of a corporation. If made on behalf of a partnership,
218 joint venture, association, trust, estate, or in any other group
219 or combination acting as a unit, any individual delegated by such
220 firm shall swear to the return on behalf of the taxpayer. The
221 commissioner may prescribe methods by which the taxpayer may swear
222 to his return.

223 (4) The commissioner may promulgate rules and regulations to
224 require or permit filing periods of any duration, in lieu of
225 monthly filing periods, for any taxpayer or group thereof.

226 (5) The commissioner may require the execution and filing by
227 the taxpayer with the commissioner of a good and solvent bond with
228 some surety company authorized to do business in Mississippi as
229 surety thereon in an amount double the aggregate tax liability by
230 such taxpayer for any previous three (3) months' period within the
231 last calendar year or estimated three (3) months' tax liability.
232 Said bond is to be conditioned for the prompt payment of such
233 taxes as may be due for each such return.

234 (6) The commissioner, for good cause, may grant such
235 reasonable additional time within which to make any return
236 required under the provisions of this chapter as he may deem
237 proper, but the time for filing any return shall not be extended
238 beyond the twentieth of the month next succeeding the regular due
239 date of the return without the imposition of interest at the rate
240 of one percent (1%) per month or fractional part of a month from
241 the time the return was due until the tax is paid.

242 (7) For persistent, willful, or recurring failure to make
243 any return and pay the tax shown thereby to be due by the time
244 specified, there shall be added to the amount of tax shown to be



245 due ten percent (10%) damages, or interest at the rate of one
246 percent (1%) per month, or both.

247 (8) Any taxpayer may, upon making application therefor,
248 obtain from the commissioner an extension of time for the payment
249 of taxes due on credit sales until collections thereon have been
250 made. When such extension is granted, the taxpayer shall
251 thereafter include in each monthly or quarterly report all
252 collections made during the preceding month or quarter, and shall
253 pay the taxes due thereon at the time of filing such report. Such
254 permission may be revoked or denied at the discretion of the
255 commissioner when, in his opinion, a total sales basis will best
256 reflect the taxable income or expedite examination of the
257 taxpayer's records.

258 (9) Any taxpayer reporting credit sales before collection
259 thereof has been made may take credit on subsequent returns or
260 reports for bad debts actually charged off, if such amounts
261 charged off have previously been included in taxable gross income
262 or taxable gross proceeds of sales, as the case may be, and the
263 tax paid thereon. However, any amounts subsequently collected on
264 accounts that have been charged off as bad debts shall be included
265 in subsequent reports and the tax shall be paid thereon.

266 (10) In cases where an extension of time has been granted by
267 the commissioner for payment of taxes due on credit sales and the
268 taxpayer thereafter discontinues the business, such taxpayer shall
269 be required to file with the commissioner within ten (10) days, or
270 such further time as the commissioner may direct, from the date of
271 the discontinuance of such business, a special report showing the
272 amounts of any credit sales which have not been included in
273 determining the measure of the tax previously paid and any other
274 information with reference to credit sales as the commissioner may
275 require. The commissioner shall thereupon investigate the facts
276 with reference to credit sales and the condition of the accounts,
277 and shall determine, from the best evidence available, the value



278 of all open accounts, notes, or other evidence of debt arising
279 from credit sales. The value of all notes, open accounts and
280 other evidence of debt, as thus determined by the commissioner,
281 shall be used in determining the amount of the tax for which such
282 taxpayer shall be liable. When the amount of the tax shall have
283 been ascertained, the taxpayer shall be required to pay the same
284 within ten (10) days or such further time as the commissioner may
285 allow, notwithstanding the fact that such note or accounts may
286 still remain uncollected.

287 **SECTION 3.** Section 27-67-17, Mississippi Code of 1972, is
288 amended as follows:

289 27-67-17. (1) Except as otherwise provided in this section,
290 the commissioner shall collect the tax imposed by this article,
291 and every person subject to its provisions shall remit to the
292 commissioner, on or before the twentieth day of each month, the
293 amount of tax due by such person for the preceding calendar month.
294 Returns and payments placed in the mail must be postmarked by the
295 due date in order to be timely filed, except that when the due
296 date falls on a weekend or holiday, returns and payments placed in
297 the mail must be postmarked by the first working day following the
298 due date in order to be considered timely filed. Every taxpayer
299 shall file a return with his remittance, which return shall be
300 prescribed by the commissioner and shall show for the calendar
301 month preceding the tax payment date, the total sale or purchase
302 price, or value of tangible personal property sold, used, stored
303 or consumed by him for benefit received or service performed, and
304 such other information as the commissioner may deem pertinent and
305 necessary for determining the amount of tax due thereunder.

306 (2) The commissioner, in his discretion, may authorize in
307 writing the filing of returns and the payment of tax on a
308 quarterly basis by any person required or authorized to pay the
309 tax imposed, such authority to be subject to revocation for good
310 cause by the commissioner.



311 (3) In instances where it is impractical to file returns and
312 pay the tax monthly or quarterly, the commissioner may authorize
313 the filing of semiannual or annual returns.

314 (4) A taxpayer required to collect use taxes under this
315 article and having an average monthly use tax liability of at
316 least Twenty Thousand Dollars (\$20,000.00) for the preceding
317 calendar year shall pay to the State Tax Commission on or before
318 June 25, 2003, and on or before the twenty-fifth day of June of
319 each succeeding year thereafter, an amount equal to at least
320 seventy-five percent (75%) of such taxpayer's estimated use tax
321 liability for the month of June of the current calendar year, or
322 an amount equal to at least seventy-five percent (75%) of the
323 taxpayer's use tax liability for the month of June of the
324 preceding calendar year. Payments required to be made under this
325 subsection must be received by the State Tax Commission no later
326 than June 25 in order to be considered timely made. A taxpayer
327 that fails to comply with the requirements of this subsection may
328 be assessed a penalty in an amount equal to ten percent (10%) of
329 the taxpayer's actual use tax liability for the month of June for
330 which the estimated payment was required to be made. Payments
331 made by a taxpayer under this subsection shall not be considered
332 to be collected for the purposes of any use tax diversions
333 required by law until the taxpayer files a return for the actual
334 use taxes collected during the month of June. This subsection
335 shall not apply to any agency, department or instrumentality of
336 the United States, any agency, department, institution,
337 instrumentality or political subdivision of the State of
338 Mississippi, or any agency, department, institution or
339 instrumentality of any political subdivision of the State of
340 Mississippi. Payments made pursuant to this subsection for the
341 month of June 2003, shall be deposited by the State Tax Commission
342 into the Budget Contingency Fund created under Section 27-103-301,
343 and payments made pursuant to this subsection for the month of



344 June of 2004, and each succeeding year thereafter, shall be
345 deposited by the State Tax Commission into the State General Fund.

346 (5) The commissioner, in his discretion, may authorize the
347 computation of the tax on the basis of a formula in lieu of direct
348 accounting of specific properties in instances where such method
349 will expedite, simplify or provide a more equitable means of
350 determining liability under this article. All formulas shall be
351 subject to revocation for good cause by the commissioner.

352 **SECTION 4.** Section 27-15-107, Mississippi Code of 1972, is
353 amended as follows:

354 27-15-107. Every insurance company liable for the tax under
355 the provisions hereof shall make and file with the State Tax
356 Commission a full and correct statement, under the oath of its
357 president, secretary or other duly authorized officer at its home
358 or head office in this country, of the gross amount of its premium
359 receipts during the reporting period, and shall, at the time of
360 filing such report, pay to the State Tax Commission the tax levied
361 hereby upon the premium collections for said period, computed as
362 provided in Sections 27-15-103 and 27-15-109.

363 Such report and payment are due as follows:

364 For the period July 1 through September 30, the report and
365 payment are due by October 20;

366 For the period October 1 through December 31, the report and
367 payment are due by February 20;

368 For the period January 1 through March 31, the report and
369 payment are due by April 20;

370 For the period April 1 through June 30, the report and
371 payment are due by July 20. However, for the period April 1
372 through June 30, 2003, and for the period April 1 through June 30
373 of each succeeding year thereafter, the report and payment for the
374 months of April and May are due by June 20, and the report and
375 payment for the month of June are due by July 20. Such payments
376 for the months of April and May 2003, shall, after diversion, be



377 deposited by the State Tax Commission into the Budget Contingency
378 Fund created under Section 27-103-301, and payments for the months
379 of April and May of 2004, and each succeeding year thereafter,
380 shall, after diversion, be deposited by the State Tax Commission
381 into the State General Fund.

382 On or before July 31, 1982, every insurance company liable
383 for the payment of tax hereunder shall make and file with the
384 State Tax Commission, as provided herein, a report of the gross
385 amount of its premium receipts not heretofore reported for periods
386 prior to July 1, 1982, and shall, at the time of filing such
387 report, pay to the State Tax Commission the tax levied upon the
388 premium collections for said periods computed as provided in
389 Sections 27-15-103 and 27-15-109.

390 Every insurance company liable for the payment of tax
391 hereunder shall file an annual reconciliation statement of taxes
392 paid during the previous year. The annual reconciliation
393 statement shall be in the form prescribed by the State Tax
394 Commission and shall be filed with the State Tax Commission on or
395 before February 20 following the close of each calendar year.

396 The State Tax Commission shall have the authority to
397 promulgate rules and regulations, not inconsistent with this
398 article, as it may deem necessary to enforce its provisions.

399 **SECTION 5.** The State Treasurer is authorized and directed to
400 borrow funds from the Working Cash-Stabilization Reserve Fund
401 created in Section 27-103-203 or from special funds in the State
402 Treasury, or both, to offset any temporary cash flow deficiencies
403 in the Budget Contingency Fund created in Section 27-103-301
404 regarding Budget Contingency Fund monies generated under House
405 Bill No. 1379, 2002 Regular Session. The amount borrowed from the
406 Working Cash-Stabilization Reserve Fund or from special funds in
407 the State Treasury, or both, shall not exceed One Hundred Nineteen
408 Million Two Hundred Thousand Dollars (\$119,200,000.00) in the
409 aggregate. The State Treasurer shall reimburse, from Budget



410 Contingency Fund monies generated under House Bill No. 1379, 2002
411 Regular Session, the Working Cash-Stabilization Reserve Fund or
412 special funds in the State Treasury, or both, for all sums
413 borrowed for such temporary cash flow deficiency purposes. The
414 State Treasurer shall immediately notify the Legislative Budget
415 Office and the State Department of Finance and Administration of
416 each transfer into and out of such funds.

417 **SECTION 6.** This act shall take effect and be in force from
418 and after July 1, 2002.

