## **REPORT OF CONFERENCE COMMITTEE**

## MR. SPEAKER AND MADAM PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H. B. No. 1379: Tax payments; require prepayment of June estimate of income withholding and sales/use taxes and revise insurance premium tax payment.

We, therefore, respectfully submit the following report and recommendation:

- 1. That the Senate recede from its Amendment No. 1.
- 2. That the House and Senate adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

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

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(b) An employer having an average monthly withholding

tax liability of at least Twenty Thousand Dollars (\$20,000.00) for 71 72 the preceding calendar year shall pay to the State Tax Commission on or before June 25, 2003, and on or before the twenty-fifth day 73 of June of each succeeding year thereafter, an amount equal to at 74 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 (75%) of the employer's withholding tax liability for the month of 78 June of the preceding taxable year. Payments required to be made 79 80 under this paragraph (b) must be received by the State Tax Commission no later than June 25 in order to be considered timely 81 82 made. An employer that fails to comply with the requirements of this paragraph (b) may be assessed a penalty in an amount equal to 83 ten percent (10%) of the employer's actual withholding tax 84 liability for the month of June for which the estimated payment 85 was required to be made. This paragraph (b) shall not apply to 86 87 any agency, department or instrumentality of the United States, any agency, department, institution, instrumentality or political 88 89 subdivision of the State of Mississippi, or any agency, department, institution or instrumentality of any political 90 subdivision of the State of Mississippi. Payments made pursuant 91 to this paragraph (b) for the month of June 2003, less One Hundred 92 Thousand Dollars (\$100,000.00) thereof to be retained by the State 93 94 Tax Commission to defray the costs of collection, shall be deposited by the State Tax Commission into the Budget Contingency 95 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 succeeding year thereafter, less One Hundred Thousand Dollars 98 99 (\$100,000.00) thereof to be retained by the State Tax Commission each year to defray the costs of collection, shall be deposited by 100 101 the State Tax Commission into the State General Fund. 102 (c) The commissioner may promulgate rules and regulations to require or permit filing periods of any duration, 103 in lieu of monthly or quarterly filing periods, for any taxpayer 104 105 or group thereof.

106 (2) Notwithstanding any of the other provisions of this

section, all transient employers and all employers engaged in any 107 108 business which is seasonal shall make return and pay over to the commissioner on a monthly basis, the full amounts required to be 109 110 deducted and withheld from the wages by such employer for the calendar month. Such returns and payments to the commissioner by 111 such employers shall be made on or before the fifteenth day of the 112 month following the month for which such amounts were deducted and 113 withheld from the wages of his employees. The commissioner shall 114 have the authority to issue reasonable rules and regulations 115 designating or classifying said transient and seasonal employers. 116

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

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

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

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

141 (7) Magnetic media reporting may be required in a manner to142 be determined by the commissioner.

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

27-65-33. (1) Except as otherwise provided in this section, 145 146 the taxes levied by this chapter shall be due and payable on or before the twentieth day of the month next succeeding the month in 147 148 which the tax accrues, except as otherwise provided. Returns and payments placed in the mail must be postmarked by the due date in 149 order to be considered timely filed, except when the due date 150 falls on a weekend or holiday, returns and payments placed in the 151 152 mail must be postmarked by the first working day following the due 153 date in order to be considered timely filed. The taxpayer shall make a return showing the gross proceeds of sales or the gross 154 155 income of the business, and any and all allowable deductions, or exempt sales, and compute the tax due for the period covered. 156

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

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

(b) The compensation or discount shall not apply to167 taxes collected by a county official or state agency.

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

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

The compensation or discount allowed and taken for 179 (e) 180 any filing period may be reassessed and collected when an audit of a taxpayer's records reveals a tax deficiency for that period. 181 (2) A taxpayer required to collect sales taxes under this 182 chapter and having an average monthly sales tax liability of at 183 184 least Twenty Thousand Dollars (\$20,000.00) for the preceding 185 calendar year shall pay to the State Tax Commission on or before June 25, 2003, and on or before the twenty-fifth day of June of 186 each succeeding year thereafter, an amount equal to at least 187 seventy-five percent (75%) of such taxpayer's estimated sales tax 188 189 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 taxpayer's sales tax liability for the month of June of the 191 preceding calendar year. Payments required to be made under this 192 subsection must be received by the State Tax Commission no later 193 than June 25 in order to be considered timely made. A taxpayer 194 195 that fails to comply with the requirements of this subsection may be assessed a penalty in an amount equal to ten percent (10%) of 196 the taxpayer's actual sales tax liability for the month of June 197 for which the estimated payment was required to be made. Payments 198 199 made by a taxpayer under this subsection shall not be considered 200 to be collected for the purposes of any sales tax diversions required by law until the taxpayer files a return for the actual 201 sales taxes collected during the month of June. This subsection 202 203 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 instrumentality of any political subdivision of the State of 207 208 Mississippi. Payments made pursuant to this subsection for the month of June 2003, shall be deposited by the State Tax Commission 209 210 into the Budget Contingency Fund created under Section 27-103-301, and payments made pursuant to this subsection for the month of 211 212 June of 2004, and each succeeding year thereafter, shall be deposited by the State Tax Commission into the State General Fund. 213 (3) All returns shall be sworn to by the taxpayer, if made 214

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

223 <u>(4)</u> 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.

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

234 (6) The commissioner, for good cause, may grant such reasonable additional time within which to make any return 235 236 required under the provisions of this chapter as he may deem proper, but the time for filing any return shall not be extended 237 beyond the twentieth of the month next succeeding the regular due 238 239 date of the return without the imposition of interest at the rate of one percent (1%) per month or fractional part of a month from 240 241 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 <u>(8)</u> 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 thereafter include in each monthly or quarterly report all collections made during the preceding month or quarter, and shall pay the taxes due thereon at the time of filing such report. Such permission may be revoked or denied at the discretion of the commissioner when, in his opinion, a total sales basis will best reflect the taxable income or expedite examination of the taxpayer's records.

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

In cases where an extension of time has been granted by 266 (10)267 the commissioner for payment of taxes due on credit sales and the 268 taxpayer thereafter discontinues the business, such taxpayer shall be required to file with the commissioner within ten (10) days, or 269 270 such further time as the commissioner may direct, from the date of the discontinuance of such business, a special report showing the 271 272 amounts of any credit sales which have not been included in determining the measure of the tax previously paid and any other 273 information with reference to credit sales as the commissioner may 274 275 require. The commissioner shall thereupon investigate the facts with reference to credit sales and the condition of the accounts, 276 and shall determine, from the best evidence available, the value 277 of all open accounts, notes, or other evidence of debt arising 278 from credit sales. The value of all notes, open accounts and 279 other evidence of debt, as thus determined by the commissioner, 280 shall be used in determining the amount of the tax for which such 281 282 taxpayer shall be liable. When the amount of the tax shall have been ascertained, the taxpayer shall be required to pay the same 283 within ten (10) days or such further time as the commissioner may 284 285 allow, notwithstanding the fact that such note or accounts may still remain uncollected. 286

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

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

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 <u>(3)</u> 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.

(4) A taxpayer required to collect use taxes under this 314 315 article and having an average monthly use tax liability of at least Twenty Thousand Dollars (\$20,000.00) for the preceding 316 calendar year shall pay to the State Tax Commission on or before 317 318 June 25, 2003, and on or before the twenty-fifth day of June of each succeeding year thereafter, an amount equal to at least 319 320 seventy-five percent (75%) of such taxpayer's estimated use tax liability for the month of June of the current calendar year, or 321 an amount equal to at least seventy-five percent (75%) of the 322

taxpayer's use tax liability for the month of June of the 323 324 preceding calendar year. Payments required to be made under this subsection must be received by the State Tax Commission no later 325 than June 25 in order to be considered timely made. A taxpayer 326 that fails to comply with the requirements of this subsection may 327 328 be assessed a penalty in an amount equal to ten percent (10%) of the taxpayer's actual use tax liability for the month of June for 329 which the estimated payment was required to be made. Payments 330 made by a taxpayer under this subsection shall not be considered 331 332 to be collected for the purposes of any use tax diversions required by law until the taxpayer files a return for the actual 333 use taxes collected during the month of June. This subsection 334 shall not apply to any agency, department or instrumentality of 335 the United States, any agency, department, institution, 336 instrumentality or political subdivision of the State of 337 338 Mississippi, or any agency, department, institution or 339 instrumentality of any political subdivision of the State of Mississippi. Payments made pursuant to this subsection for the 340 month of June 2003, shall be deposited by the State Tax Commission 341 342 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 deposited by the State Tax Commission into the State General Fund. 345 346

347 (5) The commissioner, in his discretion, may authorize the 348 computation of the tax on the basis of a formula in lieu of direct 349 accounting of specific properties in instances where such method 350 will expedite, simplify or provide a more equitable means of 351 determining liability under this article. All formulas shall be 352 subject to revocation for good cause by the commissioner.

353 **SECTION 4.** Section 27-15-107, Mississippi Code of 1972, is 354 amended as follows:

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

364 Such report and payment are due as follows:

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

367 For the period October 1 through December 31, the report and 368 payment are due by February 20;

369 For the period January 1 through March 31, the report and 370 payment are due by April 20;

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 377 378 deposited by the State Tax Commission into the Budget Contingency 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

383 On or before July 31, 1982, every insurance company liable 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 389 390 Sections 27-15-103 and 27-15-109.

Every insurance company liable for the payment of tax hereunder shall file an annual reconciliation statement of taxes paid during the previous year. The annual reconciliation statement shall be in the form prescribed by the State Tax 395 Commission and shall be filed with the State Tax Commission on or 396 before February 20 following the close of each calendar year.

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

**<u>SECTION 5.</u>** 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 402 403 Treasury, or both, to offset any temporary cash flow deficiencies 404 in the Budget Contingency Fund created in Section 27-103-301 regarding Budget Contingency Fund monies generated under House 405 406 Bill No. 1379, 2002 Regular Session. The amount borrowed from the 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 410 411 Contingency Fund monies generated under House Bill No. 1379, 2002 Regular Session, the Working Cash-Stabilization Reserve Fund or 412 413 special funds in the State Treasury, or both, for all sums borrowed for such temporary cash flow deficiency purposes. 414 The 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

418 **SECTION 6.** This act shall take effect and be in force from 419 and after July 1, 2002.

Further, amend by striking the title in its entirety and inserting in lieu thereof the following:

AN ACT TO AMEND SECTION 27-7-309, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY EMPLOYER HAVING AN AVERAGE MONTHLY WITHHOLDING 1 2 TAX LIABILITY OF AT LEAST \$20,000.00 FOR THE PRECEDING TAXABLE 3 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 ANY TAXPAYER REQUIRED TO COLLECT SALES TAXES AND HAVING AN AVERAGE 10 MONTHLY SALES TAX LIABILITY OF AT LEAST \$20,000.00 FOR THE PRECEDING CALENDAR YEAR SHALL PAY TO THE STATE TAX COMMISSION ON 11 12 OR BEFORE JUNE 25, 2003, AND ON OR BEFORE THE TWENTY-FIFTH DAY OF JUNE OF EACH SUCCEEDING YEAR THEREAFTER, AN AMOUNT EQUAL TO AT 13 14 LEAST SEVENTY-FIVE PERCENT OF SUCH TAXPAYER'S ESTIMATED SALES TAX 15 LIABILITY FOR THE MONTH OF JUNE OF THE CURRENT CALENDAR YEAR; TO AMEND SECTION 27-67-17, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT 16 17

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

CONFEREES FOR THE HOUSE

CONFEREES FOR THE SENATE

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William	J.	МсСоу	

William R. Minor

Robert P. Chamberlin

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Edward Blackmon, Jr.

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Ray Rogers

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