

By: Representative Formby

To: Ways and Means

HOUSE BILL NO. 1324

1 AN ACT TO AMEND SECTION 27-65-33, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE THAT WHEN CALCULATING THE ESTIMATED SALES TAX LIABILITY
 3 FOR THE MONTH OF JUNE OF THE CURRENT CALENDAR YEAR FOR A TAXPAYER
 4 REQUIRED TO PAY ON OR BEFORE THE TWENTY-FIFTH DAY OF JUNE, AN
 5 AMOUNT EQUAL TO AT LEAST SEVENTY-FIVE PERCENT OF THE TAXPAYER'S
 6 ESTIMATED SALES TAX LIABILITY FOR THE MONTH OF JUNE OF THE CURRENT
 7 CALENDAR YEAR OR SEVENTY-FIVE PERCENT OF THE TAXPAYER'S SALES TAX
 8 LIABILITY FOR THE MONTH OF JUNE OF THE PRECEDING CALENDAR YEAR, A
 9 TAXPAYER DOES NOT HAVE TO INCLUDE TAXES DUE ON CREDIT SALES FOR
 10 WHICH THE TAXPAYER HAS NOT RECEIVED PAYMENT BEFORE THE TWENTIETH
 11 DAY OF JUNE; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 27-65-33, Mississippi Code of 1972, is
 14 amended as follows:

15 27-65-33. (1) Except as otherwise provided in this section,
 16 the taxes levied by this chapter shall be due and payable on or
 17 before the twentieth day of the month next succeeding the month in
 18 which the tax accrues, except as otherwise provided. Returns and
 19 payments placed in the mail must be postmarked by the due date in
 20 order to be considered timely filed, except when the due date
 21 falls on a weekend or holiday, returns and payments placed in the
 22 mail must be postmarked by the first working day following the due
 23 date in order to be considered timely filed. The taxpayer shall
 24 make a return showing the gross proceeds of sales or the gross
 25 income of the business, and any and all allowable deductions, or
 26 exempt sales, and compute the tax due for the period covered.

27 As compensation for collecting sales and use taxes, complying
 28 fully with the applicable statutes, filing returns and supplements
 29 thereto and paying all taxes by the twentieth of the month
 30 following the period covered, the taxpayer may discount and retain



31 two percent (2%) of the liability on each return subject to the
32 following limitations:

33 (a) The compensation or discount shall not apply to
34 taxes levied under the provisions of Sections 27-65-19 and
35 27-65-21, or on charges for ginning cotton under Section 27-65-23.

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

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

42 (d) The compensation or discount shall not apply to any
43 wholesale tax, the rate of which is equal to or greater than the
44 tax rate applicable to retail sales of the same property or
45 service. The retailer of such items shall be entitled to the
46 compensation based on the tax computed on retail sales before
47 application of the credit for any tax paid to the wholesaler,
48 jobber, or other person.

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

52 (2) A taxpayer required to collect sales taxes under this
53 chapter and having an average monthly sales tax liability of at
54 least Twenty Thousand Dollars (\$20,000.00) for the preceding
55 calendar year shall pay to the State Tax Commission on or before
56 June 25, 2003, and on or before the twenty-fifth day of June of
57 each succeeding year thereafter, an amount equal to at least
58 seventy-five percent (75%) of such taxpayer's estimated sales tax
59 liability for the month of June of the current calendar year, or
60 an amount equal to at least seventy-five percent (75%) of the
61 taxpayer's sales tax liability for the month of June of the
62 preceding calendar year. For the purposes of calculating a
63 taxpayer's estimated sales tax liability for the month of June of



64 the current calendar year, the taxpayer does not have to include
65 taxes due on credit sales for which the taxpayer has not received
66 payment before June 20. Payments required to be made under this
67 subsection must be received by the State Tax Commission no later
68 than June 25 in order to be considered timely made. A taxpayer
69 that fails to comply with the requirements of this subsection may
70 be assessed a penalty in an amount equal to ten percent (10%) of
71 the taxpayer's actual sales tax liability for the month of June
72 for which the estimated payment was required to be made. Payments
73 made by a taxpayer under this subsection shall not be considered
74 to be collected for the purposes of any sales tax diversions
75 required by law until the taxpayer files a return for the actual
76 sales taxes collected during the month of June. This subsection
77 shall not apply to any agency, department or instrumentality of
78 the United States, any agency, department, institution,
79 instrumentality or political subdivision of the State of
80 Mississippi, or any agency, department, institution or
81 instrumentality of any political subdivision of the State of
82 Mississippi. Payments made pursuant to this subsection for the
83 month of June 2003, shall be deposited by the State Tax Commission
84 into the Budget Contingency Fund created under Section 27-103-301,
85 and payments made pursuant to this subsection for the month of
86 June of 2004, and each succeeding year thereafter, shall be
87 deposited by the State Tax Commission into the State General Fund.

88 (3) All returns shall be sworn to by the taxpayer, if made
89 by an individual, or by the president, vice president, secretary
90 or treasurer of a corporation, or authorized agent, if made on
91 behalf of a corporation. If made on behalf of a partnership,
92 joint venture, association, trust, estate, or in any other group
93 or combination acting as a unit, any individual delegated by such
94 firm shall swear to the return on behalf of the taxpayer. The
95 commissioner may prescribe methods by which the taxpayer may swear
96 to his return.



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

100 (5) The commissioner may require the execution and filing by
101 the taxpayer with the commissioner of a good and solvent bond with
102 some surety company authorized to do business in Mississippi as
103 surety thereon in an amount double the aggregate tax liability by
104 such taxpayer for any previous three (3) months' period within the
105 last calendar year or estimated three (3) months' tax liability.
106 Said bond is to be conditioned for the prompt payment of such
107 taxes as may be due for each such return.

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

116 (7) For persistent, willful, or recurring failure to make
117 any return and pay the tax shown thereby to be due by the time
118 specified, there shall be added to the amount of tax shown to be
119 due ten percent (10%) damages, or interest at the rate of one
120 percent (1%) per month, or both.

121 (8) Any taxpayer may, upon making application therefor,
122 obtain from the commissioner an extension of time for the payment
123 of taxes due on credit sales until collections thereon have been
124 made. When such extension is granted, the taxpayer shall
125 thereafter include in each monthly or quarterly report all
126 collections made during the preceding month or quarter, and shall
127 pay the taxes due thereon at the time of filing such report. Such
128 permission may be revoked or denied at the discretion of the
129 commissioner when, in his opinion, a total sales basis will best



130 reflect the taxable income or expedite examination of the
131 taxpayer's records.

132 (9) Any taxpayer reporting credit sales before collection
133 thereof has been made may take credit on subsequent returns or
134 reports for bad debts actually charged off, if such amounts
135 charged off have previously been included in taxable gross income
136 or taxable gross proceeds of sales, as the case may be, and the
137 tax paid thereon. However, any amounts subsequently collected on
138 accounts that have been charged off as bad debts shall be included
139 in subsequent reports and the tax shall be paid thereon.

140 (10) In cases where an extension of time has been granted by
141 the commissioner for payment of taxes due on credit sales and the
142 taxpayer thereafter discontinues the business, such taxpayer shall
143 be required to file with the commissioner within ten (10) days, or
144 such further time as the commissioner may direct, from the date of
145 the discontinuance of such business, a special report showing the
146 amounts of any credit sales which have not been included in
147 determining the measure of the tax previously paid and any other
148 information with reference to credit sales as the commissioner may
149 require. The commissioner shall thereupon investigate the facts
150 with reference to credit sales and the condition of the accounts,
151 and shall determine, from the best evidence available, the value
152 of all open accounts, notes, or other evidence of debt arising
153 from credit sales. The value of all notes, open accounts and
154 other evidence of debt, as thus determined by the commissioner,
155 shall be used in determining the amount of the tax for which such
156 taxpayer shall be liable. When the amount of the tax shall have
157 been ascertained, the taxpayer shall be required to pay the same
158 within ten (10) days or such further time as the commissioner may
159 allow, notwithstanding the fact that such note or accounts may
160 still remain uncollected.

161 **SECTION 2.** This act shall take effect and be in force from
162 and after its passage.

