HOUSE BILL NO. 1367

AN ACT TO AMEND SECTION 27-65-33, MISSISSIPPI CODE OF 1972, TO REQUIRE THE STATE TAX COMMISSION TO ESTABLISH A UNIFORM PROCEDURE TO ALLOW TAXPAYERS TO PAY DELINQUENT SALES TAXES; TO PROVIDE A REPEALER ON THIS SECTION; AND FOR RELATED PURPOSES.

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

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

27-65-33. (1) Except as otherwise provided in this section, 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 which the tax accrues, except as otherwise provided. Returns and payments placed in the mail must be postmarked by the due date in order to be considered timely filed, except when the due date falls on a weekend or holiday, returns and payments placed in the mail must be postmarked by the first working day following the due date in order to be considered timely filed. The taxpayer shall make a return showing the gross proceeds of sales or the gross income of the business, and any and all allowable deductions, or exempt sales, and compute the tax due for the period covered.

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 to 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.

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

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

(2) A taxpayer required to collect sales taxes under this chapter and having an average monthly sales tax liability of at least Twenty Thousand Dollars ($20,000.00) for 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 of June of each succeeding year thereafter, an amount equal to at least seventy-five percent (75%) of such taxpayer's estimated sales tax liability for the month of June of the current calendar year, or an amount equal to at least seventy-five percent (75%) of the taxpayer's sales tax liability for the month of June of the preceding calendar year. Payments required to be made under this subsection must be received by the State Tax Commission no later than June 25 in order to be considered timely made. A taxpayer that fails to comply with the requirements of this subsection may be assessed a penalty in an amount equal to ten percent (10%) of the taxpayer's actual sales tax liability for the month of June for which the estimated payment was required to be made. Payments
made by a taxpayer under this subsection shall not be considered
to be collected for the purposes of any sales tax diversions
required by law until the taxpayer files a return for the actual
sales taxes collected during the month of June. This subsection
shall not apply to any agency, department or instrumentality of
the United States, any agency, department, institution,
instrumentality or political subdivision of the State of
Mississippi, or any agency, department, institution or
instrumentality of any political subdivision of the State of
Mississippi. Payments made pursuant to this subsection for the
month of June 2003, shall be deposited by the State Tax Commission
into the Budget Contingency Fund created under Section 27-103-301,
and payments made pursuant to this subsection for the month of
June of 2004, and each succeeding year thereafter, shall be
deposited by the State Tax Commission into the State General Fund.

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

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

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

(6) The commissioner, for good cause, may grant such
reasonable additional time within which to make any return
required under the provisions of this chapter as he may deem
proper, but the time for filing any return shall not be extended
beyond the twentieth of the month next succeeding the regular due
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
the time the return was due until the tax is paid.

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

(8) Any taxpayer may, upon making application therefor,
obtain from the commissioner an extension of time for the payment
of taxes due on credit sales until collections thereon have been
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
thereof has been made may take credit on subsequent returns or
reports for bad debts actually charged off, if such amounts
charged off have previously been included in taxable gross income
or taxable gross proceeds of sales, as the case may be, and the
tax paid thereon. However, any amounts subsequently collected on
accounts that have been charged off as bad debts shall be included in subsequent reports and the tax shall be paid thereon.

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

(11) The commissioner shall establish a uniform procedure to allow taxpayers to file returns and pay taxes that are delinquent under this chapter. This subsection (11) shall be repealed from and after July 1, 2004.

SECTION 2. This act shall take effect and be in force from and after July 1, 2003.