

By: Representative Fleming

To: Ways and Means

## HOUSE BILL NO. 195

1 AN ACT TO AMEND SECTION 27-65-33, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT FOR SALES TAX RETURNS AND USE TAX RETURNS FILED  
3 DURING THE PERIOD BEGINNING JULY 1, 2004, AND ENDING JUNE 30,  
4 2006, A TAXPAYER SHALL NOT BE ALLOWED TO RETAIN A COMPENSATION OR  
5 DISCOUNT AS COMPENSATION FOR COLLECTING SALES AND USE TAXES AND  
6 FOR FILING NECESSARY RETURNS WITH THE STATE TAX COMMISSION; AND  
7 FOR RELATED PURPOSES.

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

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

11 27-65-33. (1) Except as otherwise provided in this section,  
12 the taxes levied by this chapter shall be due and payable on or  
13 before the twentieth day of the month next succeeding the month in  
14 which the tax accrues, except as otherwise provided. Returns and  
15 payments placed in the mail must be postmarked by the due date in  
16 order to be considered timely filed, except when the due date  
17 falls on a weekend or holiday, returns and payments placed in the  
18 mail must be postmarked by the first working day following the due  
19 date in order to be considered timely filed. The taxpayer shall  
20 make a return showing the gross proceeds of sales or the gross  
21 income of the business, and any and all allowable deductions, or  
22 exempt sales, and compute the tax due for the period covered.

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

29           (a) The compensation or discount shall not apply to  
30 taxes levied under the provisions of Sections 27-65-19 and  
31 27-65-21, or on charges for ginning cotton under Section 27-65-23.

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

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

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

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

48           (f) The compensation or discount shall not be allowed  
49 and may not be taken by a taxpayer on returns filed during the  
50 period beginning July 1 2004, and ending June 30, 2006.

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

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

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

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

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

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

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

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

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

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

156           **SECTION 2.** This act shall take effect and be in force from  
157 and after July 1, 2004.