

By: Senator(s) Kirby

To: Finance

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2311

1 AN ACT TO AMEND SECTIONS 27-7-309, 27-65-33 AND 27-67-17,  
2 MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTY FOR THE FAILURE OF  
3 A TAXPAYER REQUIRED TO PAY JUNE WITHHOLDING, SALES AND USE TAXES  
4 IN ADVANCE TO PAY THE PROPER AMOUNT OF SALES TAXES FOR THE MONTH  
5 OF JUNE; AND FOR RELATED PURPOSES.

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

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

9 27-7-309. (1) (a) Except as otherwise provided in this  
10 subsection, every employer required to deduct and withhold from  
11 wages under this article shall, for each calendar quarter, on or  
12 before the fifteenth day of the month following the close of such  
13 calendar quarter, file a withholding return as prescribed by the  
14 commissioner and pay over to the commissioner the full amount  
15 required to be deducted and withheld from wages by such employer  
16 for the calendar quarter. Provided that the commissioner may, by  
17 regulation, provide that every such employer shall, on or before  
18 the fifteenth day of each month, pay over to the commissioner or a  
19 depository designated by the commissioner, the amount required to  
20 be deducted and withheld by such employer for the preceding month,  
21 if such amount is One Hundred Dollars (\$100.00) or more. Returns  
22 and payments placed in the mail must be postmarked by the due date  
23 in order to be timely filed, except when the due date falls on a  
24 weekend or holiday, returns and payments placed in the mail must  
25 be postmarked by the first working day following the due date in  
26 order to be considered timely filed.

27 (b) An employer having an average monthly withholding  
28 tax liability of at least Twenty Thousand Dollars (\$20,000.00) for

29 the preceding calendar year shall pay to the State Tax Commission  
30 on or before June 25, 2003, and on or before the twenty-fifth day  
31 of June of each succeeding year thereafter, an amount equal to at  
32 least seventy-five percent (75%) of such employer's estimated  
33 withholding tax liability for the month of June of the current  
34 taxable year, or an amount equal to at least seventy-five percent  
35 (75%) of the employer's withholding tax liability for the month of  
36 June of the preceding taxable year. Payments required to be made  
37 under this paragraph \* \* \* must be received by the State Tax  
38 Commission no later than June 25 in order to be considered timely  
39 made. An employer that fails to comply with the requirements of  
40 this paragraph \* \* \* may be assessed a penalty in an amount equal  
41 to ten percent (10%) of the difference between any amount the  
42 taxpayer pays pursuant to this paragraph and the employer's actual  
43 withholding tax liability for the month of June for which the  
44 estimated payment was required to be made. This paragraph \* \* \*  
45 shall not apply to any agency, department or instrumentality of  
46 the United States, any agency, department, institution,  
47 instrumentality or political subdivision of the State of  
48 Mississippi, or any agency, department, institution or  
49 instrumentality of any political subdivision of the State of  
50 Mississippi. Payments made pursuant to this paragraph \* \* \* for  
51 the month of June 2003, less One Hundred Thousand Dollars  
52 (\$100,000.00) thereof to be retained by the State Tax Commission  
53 to defray the costs of collection, shall be deposited by the State  
54 Tax Commission into the Budget Contingency Fund created under  
55 Section 27-103-301, and payments made pursuant to this  
56 paragraph \* \* \* for the month of June of 2004, and each succeeding  
57 year thereafter, less One Hundred Thousand Dollars (\$100,000.00)  
58 thereof to be retained by the State Tax Commission each year to  
59 defray the costs of collection, shall be deposited by the State  
60 Tax Commission into the State General Fund.

61           (c) The commissioner may promulgate rules and  
62 regulations to require or permit filing periods of any duration,  
63 in lieu of monthly or quarterly filing periods, for any taxpayer  
64 or group thereof.

65           (2) Notwithstanding any of the other provisions of this  
66 section, all transient employers and all employers engaged in any  
67 business which is seasonal shall make return and pay over to the  
68 commissioner on a monthly basis, the full amounts required to be  
69 deducted and withheld from the wages by such employer for the  
70 calendar month. Such returns and payments to the commissioner by  
71 such employers shall be made on or before the fifteenth day of the  
72 month following the month for which such amounts were deducted and  
73 withheld from the wages of his employees. The commissioner shall  
74 have the authority to issue reasonable rules and regulations  
75 designating or classifying said transient and seasonal employers.

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

81           (4) Every employer who fails to withhold or pay to the  
82 commissioner any sums required by this article to be withheld and  
83 paid, shall be personally and individually liable therefor, except  
84 as provided in Section 27-7-307; and any sum or sums withheld in  
85 accordance with the provisions of this article shall be deemed to  
86 be held in trust for the State of Mississippi and shall be  
87 recorded by the employer in a ledger account so as to clearly  
88 indicate the amount of tax withheld and that the amount is the  
89 property of the State of Mississippi.

90           (5) Once an employer has become liable to a quarterly return  
91 of withholding, he must continue to file a quarterly report, even  
92 though no tax has been withheld, until such time as he notifies

93 the commissioner, in writing, that he no longer has employees or  
94 that he is no longer liable for such quarterly returns.

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

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

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

104 27-65-33. (1) Except as otherwise provided in this section,  
105 the taxes levied by this chapter shall be due and payable on or  
106 before the twentieth day of the month next succeeding the month in  
107 which the tax accrues, except as otherwise provided. Returns and  
108 payments placed in the mail must be postmarked by the due date in  
109 order to be considered timely filed, except when the due date  
110 falls on a weekend or holiday, returns and payments placed in the  
111 mail must be postmarked by the first working day following the due  
112 date in order to be considered timely filed. The taxpayer shall  
113 make a return showing the gross proceeds of sales or the gross  
114 income of the business, and any and all allowable deductions, or  
115 exempt sales, and compute the tax due for the period covered.

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

122 (a) The compensation or discount shall not apply to  
123 taxes levied under the provisions of Sections 27-65-19 and  
124 27-65-21, or on charges for ginning cotton under Section 27-65-23.

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

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

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

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

141           (2) A taxpayer required to collect sales taxes under this  
142 chapter and having an average monthly sales tax liability of at  
143 least Twenty Thousand Dollars (\$20,000.00) for the preceding  
144 calendar year shall pay to the State Tax Commission on or before  
145 June 25, 2003, and on or before the twenty-fifth day of June of  
146 each succeeding year thereafter, an amount equal to at least  
147 seventy-five percent (75%) of such taxpayer's estimated sales tax  
148 liability for the month of June of the current calendar year, or  
149 an amount equal to at least seventy-five percent (75%) of the  
150 taxpayer's sales tax liability for the month of June of the  
151 preceding calendar year. Payments required to be made under this  
152 subsection must be received by the State Tax Commission no later  
153 than June 25 in order to be considered timely made. A taxpayer  
154 that fails to comply with the requirements of this subsection may  
155 be assessed a penalty in an amount equal to ten percent (10%) of  
156 the difference between any amount the taxpayer pays pursuant to  
157 this subsection and the taxpayer's actual sales tax liability for

158 the month of June for which the estimated payment was required to  
159 be made. Payments made by a taxpayer under this subsection shall  
160 not be considered to be collected for the purposes of any sales  
161 tax diversions required by law until the taxpayer files a return  
162 for the actual sales taxes collected during the month of June.  
163 This subsection shall not apply to any agency, department or  
164 instrumentality of the United States, any agency, department,  
165 institution, instrumentality or political subdivision of the State  
166 of Mississippi, or any agency, department, institution or  
167 instrumentality of any political subdivision of the State of  
168 Mississippi. Payments made pursuant to this subsection for the  
169 month of June 2003, shall be deposited by the State Tax Commission  
170 into the Budget Contingency Fund created under Section 27-103-301,  
171 and payments made pursuant to this subsection for the month of  
172 June of 2004, and each succeeding year thereafter, shall be  
173 deposited by the State Tax Commission into the State General Fund.

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

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

186 (5) The commissioner may require the execution and filing by  
187 the taxpayer with the commissioner of a good and solvent bond with  
188 some surety company authorized to do business in Mississippi as  
189 surety thereon in an amount double the aggregate tax liability by  
190 such taxpayer for any previous three (3) months' period within the

191 last calendar year or estimated three (3) months' tax liability.  
192 Said bond is to be conditioned for the prompt payment of such  
193 taxes as may be due for each such return.

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

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

207 (8) Any taxpayer may, upon making application therefor,  
208 obtain from the commissioner an extension of time for the payment  
209 of taxes due on credit sales until collections thereon have been  
210 made. When such extension is granted, the taxpayer shall  
211 thereafter include in each monthly or quarterly report all  
212 collections made during the preceding month or quarter, and shall  
213 pay the taxes due thereon at the time of filing such report. Such  
214 permission may be revoked or denied at the discretion of the  
215 commissioner when, in his opinion, a total sales basis will best  
216 reflect the taxable income or expedite examination of the  
217 taxpayer's records.

218 (9) Any taxpayer reporting credit sales before collection  
219 thereof has been made may take credit on subsequent returns or  
220 reports for bad debts actually charged off, if such amounts  
221 charged off have previously been included in taxable gross income  
222 or taxable gross proceeds of sales, as the case may be, and the  
223 tax paid thereon. However, any amounts subsequently collected on

224 accounts that have been charged off as bad debts shall be included  
225 in subsequent reports and the tax shall be paid thereon.

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

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

249 27-67-17. (1) Except as otherwise provided in this section,  
250 the commissioner shall collect the tax imposed by this article,  
251 and every person subject to its provisions shall remit to the  
252 commissioner, on or before the twentieth day of each month, the  
253 amount of tax due by such person for the preceding calendar month.  
254 Returns and payments placed in the mail must be postmarked by the  
255 due date in order to be timely filed, except that when the due  
256 date falls on a weekend or holiday, returns and payments placed in

257 the mail must be postmarked by the first working day following the  
258 due date in order to be considered timely filed. Every taxpayer  
259 shall file a return with his remittance, which return shall be  
260 prescribed by the commissioner and shall show for the calendar  
261 month preceding the tax payment date, the total sale or purchase  
262 price, or value of tangible personal property sold, used, stored  
263 or consumed by him for benefit received or service performed, and  
264 such other information as the commissioner may deem pertinent and  
265 necessary for determining the amount of tax due thereunder.

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

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

274 (4) A taxpayer required to collect use taxes under this  
275 article and having an average monthly use tax liability of at  
276 least Twenty Thousand Dollars (\$20,000.00) for the preceding  
277 calendar year shall pay to the State Tax Commission on or before  
278 June 25, 2003, and on or before the twenty-fifth day of June of  
279 each succeeding year thereafter, an amount equal to at least  
280 seventy-five percent (75%) of such taxpayer's estimated use tax  
281 liability for the month of June of the current calendar year, or  
282 an amount equal to at least seventy-five percent (75%) of the  
283 taxpayer's use tax liability for the month of June of the  
284 preceding calendar year. Payments required to be made under this  
285 subsection must be received by the State Tax Commission no later  
286 than June 25 in order to be considered timely made. A taxpayer  
287 that fails to comply with the requirements of this subsection may  
288 be assessed a penalty in an amount equal to ten percent (10%) of  
289 the difference between any amount the taxpayer pays pursuant to

290 this subsection and the taxpayer's actual use tax liability for  
291 the month of June for which the estimated payment was required to  
292 be made. Payments made by a taxpayer under this subsection shall  
293 not be considered to be collected for the purposes of any use tax  
294 diversions required by law until the taxpayer files a return for  
295 the actual use taxes collected during the month of June. This  
296 subsection shall not apply to any agency, department or  
297 instrumentality of the United States, any agency, department,  
298 institution, instrumentality or political subdivision of the State  
299 of Mississippi, or any agency, department, institution or  
300 instrumentality of any political subdivision of the State of  
301 Mississippi. Payments made pursuant to this subsection for the  
302 month of June 2003, shall be deposited by the State Tax Commission  
303 into the Budget Contingency Fund created under Section 27-103-301,  
304 and payments made pursuant to this subsection for the month of  
305 June of 2004, and each succeeding year thereafter, shall be  
306 deposited by the State Tax Commission into the State General Fund.

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

313 **SECTION 4.** This act shall take effect and be in force from  
314 and after its passage.