

By: Senator(s) Kirby

To: Finance

SENATE BILL NO. 2311

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

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

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

8 27-65-33. (1) Except as otherwise provided in this section,  
9 the taxes levied by this chapter shall be due and payable on or  
10 before the twentieth day of the month next succeeding the month in  
11 which the tax accrues, except as otherwise provided. Returns and  
12 payments placed in the mail must be postmarked by the due date in  
13 order to be considered timely filed, except when the due date  
14 falls on a weekend or holiday, returns and payments placed in the  
15 mail must be postmarked by the first working day following the due  
16 date in order to be considered timely filed. The taxpayer shall  
17 make a return showing the gross proceeds of sales or the gross  
18 income of the business, and any and all allowable deductions, or  
19 exempt sales, and compute the tax due for the period covered.

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

26 (a) The compensation or discount shall not apply to  
27 taxes levied under the provisions of Sections 27-65-19 and  
28 27-65-21, or on charges for ginning cotton under Section 27-65-23.

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

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

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

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

45           (2) A taxpayer required to collect sales taxes under this  
46 chapter and having an average monthly sales tax liability of at  
47 least Twenty Thousand Dollars (\$20,000.00) for the preceding  
48 calendar year shall pay to the State Tax Commission on or before  
49 June 25, 2003, and on or before the twenty-fifth day of June of  
50 each succeeding year thereafter, an amount equal to at least  
51 seventy-five percent (75%) of such taxpayer's estimated sales tax  
52 liability for the month of June of the current calendar year, or  
53 an amount equal to at least seventy-five percent (75%) of the  
54 taxpayer's sales tax liability for the month of June of the  
55 preceding calendar year. Payments required to be made under this  
56 subsection must be received by the State Tax Commission no later  
57 than June 25 in order to be considered timely made. A taxpayer  
58 that fails to comply with the requirements of this subsection may  
59 be assessed a penalty in an amount equal to ten percent (10%) of  
60 the difference between any amount the taxpayer pays pursuant to  
61 this subsection and taxpayer's actual sales tax liability for the

62 month of June for which the estimated payment was required to be  
63 made. Payments made by a taxpayer under this subsection shall not  
64 be considered to be collected for the purposes of any sales tax  
65 diversions required by law until the taxpayer files a return for  
66 the actual sales taxes collected during the month of June. This  
67 subsection shall not apply to any agency, department or  
68 instrumentality of the United States, any agency, department,  
69 institution, instrumentality or political subdivision of the State  
70 of Mississippi, or any agency, department, institution or  
71 instrumentality of any political subdivision of the State of  
72 Mississippi. Payments made pursuant to this subsection for the  
73 month of June 2003, shall be deposited by the State Tax Commission  
74 into the Budget Contingency Fund created under Section 27-103-301,  
75 and payments made pursuant to this subsection for the month of  
76 June of 2004, and each succeeding year thereafter, shall be  
77 deposited by the State Tax Commission into the State General Fund.

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

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

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

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

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

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

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

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

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

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

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