

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2404
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 27-7-309, MISSISSIPPI CODE OF 1972,
2 TO INCREASE TO \$50,000.00 THE AMOUNT OF THE AVERAGE MONTHLY
3 WITHHOLDING TAX LIABILITY FOR THE PRECEDING YEAR THAT AN EMPLOYER
4 MUST HAVE IN ORDER TO BE REQUIRED TO MAKE AN ESTIMATED PAYMENT OF
5 HIS WITHHOLDING TAX LIABILITY FOR THE QUARTER THAT ENDS IN JUNE BY
6 NOT LATER THAN JUNE 25; TO AMEND SECTION 27-65-33, MISSISSIPPI
7 CODE OF 1972, TO INCREASE TO \$50,000.00 THE AMOUNT OF THE AVERAGE
8 MONTHLY SALES TAX LIABILITY FOR THE PRECEDING YEAR THAT A TAXPAYER
9 MUST HAVE IN ORDER TO BE REQUIRED TO MAKE AN ESTIMATED PAYMENT OF
10 HIS JUNE SALES TAX LIABILITY BY NOT LATER THAN JUNE 25; TO AMEND
11 SECTION 27-67-17, MISSISSIPPI CODE OF 1972, TO INCREASE TO
12 \$50,000.00 THE AMOUNT OF THE AVERAGE MONTHLY USE TAX LIABILITY FOR
13 THE PRECEDING YEAR THAT A TAXPAYER MUST HAVE IN ORDER TO BE
14 REQUIRED TO MAKE AN ESTIMATED PAYMENT OF HIS JUNE USE TAX
15 LIABILITY BY NOT LATER THAN JUNE 25; AND FOR RELATED PURPOSES.

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

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

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

34 weekend or holiday, returns and payments placed in the mail must
35 be postmarked by the first working day following the due date in
36 order to be considered timely filed.

37 (b) An employer having an average monthly withholding
38 tax liability of at least Fifty Thousand Dollars (\$50,000.00) for
39 the preceding calendar year shall pay to the State Tax Commission
40 on or before June 25, 2007, and on or before the twenty-fifth day
41 of June of each succeeding year thereafter, an amount equal to at
42 least seventy-five percent (75%) of such employer's estimated
43 withholding tax liability for the month of June of the current
44 taxable year, or an amount equal to at least seventy-five percent
45 (75%) of the employer's withholding tax liability for the month of
46 June of the preceding taxable year. Payments required to be made
47 under this paragraph must be received by the State Tax Commission
48 no later than June 25 in order to be considered timely made. An
49 employer that fails to comply with the requirements of this
50 paragraph may be assessed a penalty in an amount equal to ten
51 percent (10%) of the difference between any amount the taxpayer
52 pays pursuant to this paragraph and the employer's actual
53 withholding tax liability for the month of June for which the
54 estimated payment was required to be made. This paragraph shall
55 not apply to any agency, department or instrumentality of the
56 United States, any agency, department, institution,
57 instrumentality or political subdivision of the State of
58 Mississippi, or any agency, department, institution or
59 instrumentality of any political subdivision of the State of
60 Mississippi. * * * Payments made pursuant to this paragraph for
61 the month of June * * *, less One Hundred Thousand Dollars
62 (\$100,000.00) thereof to be retained by the State Tax Commission
63 each year to defray the costs of collection, shall be deposited by
64 the State Tax Commission into the State General Fund.

65 (c) The commissioner may promulgate rules and
66 regulations to require or permit filing periods of any duration,

67 in lieu of monthly or quarterly filing periods, for any taxpayer
68 or group thereof.

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

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

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

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

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

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

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

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

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

126 (a) The compensation or discount shall not apply to
127 taxes levied under the provisions of Sections 27-65-19 and
128 27-65-21, or on charges for ginning cotton under Section 27-65-23.

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

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

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

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

145 (2) A taxpayer required to collect sales taxes under this
146 chapter and having an average monthly sales tax liability of at
147 least Fifty Thousand Dollars (\$50,000.00) for the preceding
148 calendar year shall pay to the State Tax Commission on or before
149 June 25, 2007, and on or before the twenty-fifth day of June of
150 each succeeding year thereafter, an amount equal to at least
151 seventy-five percent (75%) of such taxpayer's estimated sales tax
152 liability for the month of June of the current calendar year, or
153 an amount equal to at least seventy-five percent (75%) of the
154 taxpayer's sales tax liability for the month of June of the
155 preceding calendar year. Payments required to be made under this
156 subsection must be received by the State Tax Commission no later
157 than June 25 in order to be considered timely made. A taxpayer
158 that fails to comply with the requirements of this subsection may
159 be assessed a penalty in an amount equal to ten percent (10%) of
160 the difference between any amount the taxpayer pays pursuant to
161 this subsection and the taxpayer's actual sales tax liability for
162 the month of June for which the estimated payment was required to
163 be made. Payments made by a taxpayer under this subsection shall

164 not be considered to be collected for the purposes of any sales
165 tax diversions required by law until the taxpayer files a return
166 for the actual sales taxes collected during the month of June.
167 This subsection shall not apply to any agency, department or
168 instrumentality of the United States, any agency, department,
169 institution, instrumentality or political subdivision of the State
170 of Mississippi, or any agency, department, institution or
171 instrumentality of any political subdivision of the State of
172 Mississippi. * * *

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

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

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

193 (6) The commissioner, for good cause, may grant such
194 reasonable additional time within which to make any return
195 required under the provisions of this chapter as he may deem
196 proper, but the time for filing any return shall not be extended

197 beyond the twentieth of the month next succeeding the regular due
198 date of the return without the imposition of interest at the rate
199 of one percent (1%) per month or fractional part of a month from
200 the time the return was due until the tax is paid.

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

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

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

225 (10) In cases where an extension of time has been granted by
226 the commissioner for payment of taxes due on credit sales and the
227 taxpayer thereafter discontinues the business, such taxpayer shall
228 be required to file with the commissioner within ten (10) days, or
229 such further time as the commissioner may direct, from the date of

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

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

248 27-67-17. (1) Except as otherwise provided in this section,
249 the commissioner shall collect the tax imposed by this article,
250 and every person subject to its provisions shall remit to the
251 commissioner, on or before the twentieth day of each month, the
252 amount of tax due by such person for the preceding calendar month.
253 Returns and payments placed in the mail must be postmarked by the
254 due date in order to be timely filed, except that when the due
255 date falls on a weekend or holiday, returns and payments placed in
256 the mail must be postmarked by the first working day following the
257 due date in order to be considered timely filed. Every taxpayer
258 shall file a return with his remittance, which return shall be
259 prescribed by the commissioner and shall show for the calendar
260 month preceding the tax payment date, the total sale or purchase
261 price, or value of tangible personal property sold, used, stored
262 or consumed by him for benefit received or service performed, and

263 such other information as the commissioner may deem pertinent and
264 necessary for determining the amount of tax due thereunder.

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

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

273 (4) A taxpayer required to collect use taxes under this
274 article and having an average monthly use tax liability of at
275 least Fifty Thousand Dollars (\$50,000.00) for the preceding
276 calendar year shall pay to the State Tax Commission on or before
277 June 25, 2007, and on or before the twenty-fifth day of June of
278 each succeeding year thereafter, an amount equal to at least
279 seventy-five percent (75%) of such taxpayer's estimated use tax
280 liability for the month of June of the current calendar year, or
281 an amount equal to at least seventy-five percent (75%) of the
282 taxpayer's use tax liability for the month of June of the
283 preceding calendar year. Payments required to be made under this
284 subsection must be received by the State Tax Commission no later
285 than June 25 in order to be considered timely made. A taxpayer
286 that fails to comply with the requirements of this subsection may
287 be assessed a penalty in an amount equal to ten percent (10%) of
288 the difference between any amount the taxpayer pays pursuant to
289 this subsection and the taxpayer's actual use tax liability for
290 the month of June for which the estimated payment was required to
291 be made. Payments made by a taxpayer under this subsection shall
292 not be considered to be collected for the purposes of any use tax
293 diversions required by law until the taxpayer files a return for
294 the actual use taxes collected during the month of June. This
295 subsection shall not apply to any agency, department or

296 instrumentality of the United States, any agency, department,
297 institution, instrumentality or political subdivision of the State
298 of Mississippi, or any agency, department, institution or
299 instrumentality of any political subdivision of the State of
300 Mississippi. * * *

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

307 **SECTION 4.** This act shall take effect and be in force from
308 and after July 1, 2008.