

By: Senator(s) Clarke

To: Appropriations

SENATE BILL NO. 2899
(As Sent to Governor)

1 AN ACT TO DIRECT THE STATE FISCAL OFFICER TO TRANSFER CERTAIN
2 AMOUNTS TO THE BUDGET CONTINGENCY FUND FROM THE STATE GENERAL FUND
3 AND CERTAIN SPECIAL FUNDS DURING FISCAL YEARS 2012 AND 2013; TO
4 AMEND SECTION 43-13-407, MISSISSIPPI CODE OF 1972, TO TRANSFER A
5 CERTAIN AMOUNT OF DOLLARS FROM THE HEALTH CARE TRUST FUND TO THE
6 HEALTH CARE EXPENDABLE FUND IN FISCAL YEAR 2013; TO AMEND SECTIONS
7 27-7-309, 27-65-33 AND 27-67-17, MISSISSIPPI CODE OF 1972, WHICH
8 REQUIRE THE EARLY PAYMENT OF WITHHOLDING, SALES AND USE TAX
9 LIABILITY BY CERTAIN TAXPAYERS AND TO DELAY UNTIL 2013 THE
10 IMPLEMENTATION OF THE INCREASE IN THE AMOUNT OF THE AVERAGE
11 MONTHLY LIABILITY THAT TRIGGERS THE REQUIREMENT FOR EARLY PAYMENT;
12 TO ALLOW THE MISSISSIPPI EMERGENCY MANAGEMENT AGENCY THE OPTION OF
13 USING THE WORKING CASH-STABILIZATION RESERVE FUNDS AND/OR THE
14 BUDGET CONTINGENCY FUND FOR DISASTER ASSISTANCE; TO REPEAL SECTION
15 4, CHAPTER 126, LAWS OF 2009 SECOND EXTRAORDINARY SESSION, WHICH
16 REQUIRES THE STATE OF MISSISSIPPI TO REPAY A CERTAIN AMOUNT OF
17 FUNDS TO THE MISSISSIPPI DEPARTMENT OF TRANSPORTATION; AND FOR
18 RELATED PURPOSES.

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

20 **SECTION 1.** (1) During fiscal year 2012, the State Fiscal
21 Officer shall transfer to the Budget Contingency Fund created in
22 Section 27-103-301, the amount listed below from the following
23 fund:

AGENCY/FUND	FUND NO.	AMOUNT
State General Fund	2999	\$183,726,491.00

26 (2) During fiscal year 2013, the State Fiscal Officer shall
27 transfer to the Budget Contingency Fund created in Section
28 27-103-301, out of the following enumerated funds, the amounts
29 listed below from each fund:

AGENCY/FUND	FUND NO.	AMOUNT
State General Fund	2999	\$ 49,622,038.00
Hurricane Disaster Reserve Fund	3755	26,611,710.00
Department of Finance and Admin.		
Disaster Recovery Fund	3996	785,244.00



35	Treasurer's Office-Unclaimed Prop.	3178	3,000,000.00
36	Capital Post-Conviction Counsel	3098	1,037,267.00
37	Department of Insurance	3501	6,000,000.00
38	Public Service Commission -		
39	Public Utilities	3812	536,872.00
40	IHL State Court Education Fund	3257	1,500,000.00
41	Working Cash-Stabilization		
42	Reserve Fund	3992	<u>99,562,168.00</u>
43	TOTAL		\$188,655,299.00

44 (3) During Fiscal Year 2013, the State Fiscal Officer shall
45 transfer Four Hundred Thousand Dollars (\$400,000.00) from the
46 Budget Contingency Fund to the Law Enforcement Officers and Fire
47 Fighters Death Benefits Fund (Fund No. 371G).

48 The Department of Public Safety shall have authority to
49 receive, budget and expend the Four Hundred Thousand Dollars
50 (\$400,000.00) transferred to Fund No. 371G in this section. This
51 escalation shall be done in accordance with the rules and
52 regulations of the Department of Finance and Administration in a
53 manner consistent with the escalation of federal funds.

54 (4) During Fiscal Year 2013, the State Fiscal Officer shall
55 transfer Two Million Dollars (\$2,000,000.00) from the Department
56 of Finance and Administration Air Transport Fund (Fund No. 3135)
57 to the Capital Expense Fund (Fund No. 399C).

58 (5) During Fiscal Year 2013, the State Fiscal Officer shall
59 transfer Thirty-three Thousand Four Hundred Twenty-two Dollars
60 (\$33,422.00) from the Capital Post-Conviction Counsel Fund (Fund
61 No. 3098) to the Judicial Performance Fund (Fund No. 3095). If
62 House Bill No. 878, Regular Legislative Session of 2012, is
63 enacted increasing Fiscal Year 2013 fees for the Judicial
64 Performance Commission above the Fiscal Year 2012 level, the State
65 Fiscal Officer shall not make the above-mentioned transfer from
66 the Capital Post-Conviction Counsel Fund to the Judicial
67 Performance Fund.



68 (6) During Fiscal Year 2012, the State Fiscal Officer shall
69 transfer Two Million Five Hundred Thousand Dollars (\$2,500,000.00)
70 from the MMEIA-Tax Incentive Fund (Fund No. 34TT) to the Budget
71 Contingency Fund (Fund No. 3177).

72 (7) During Fiscal Year 2013, the State Fiscal Officer shall
73 transfer Ten Million Ninety-seven Thousand Four Hundred
74 Forty-three Dollars (\$10,097,443.00) from the Capital Expense Fund
75 (Fund No. 399C) to the Budget Contingency Fund (Fund No. 3177).

76 (8) During Fiscal Year 2013, the State Fiscal Officer shall
77 transfer Three Million Dollars (\$3,000,000.00) from the Budget
78 Contingency Fund (Fund No. 3177) to the Mississippi Development
79 Authority.

80 The Mississippi Development Authority shall have authority to
81 receive, budget and expend Three Million Dollars (\$3,000,000.00)
82 of Budget Contingency Funds transferred in this section. This
83 escalation shall be done in accordance with the rules and
84 regulations of the Department of Finance and Administration in a
85 manner consistent with the escalation of federal funds.

86 **SECTION 2.** Section 43-13-407, Mississippi Code of 1972, is
87 amended as follows:

88 43-13-407. (1) In accordance with the purposes of this
89 article, there is established in the State Treasury the Health
90 Care Expendable Fund, into which shall be transferred from the
91 Health Care Trust Fund the following sums:

92 (a) In fiscal year 2005, Four Hundred Fifty-six Million
93 Dollars (\$456,000,000.00);

94 (b) In fiscal year 2006, One Hundred Eighty-six Million
95 Dollars (\$186,000,000.00);

96 (c) In fiscal year 2007, One Hundred Eighty-six Million
97 Dollars (\$186,000,000.00);

98 (d) In fiscal year 2008, One Hundred Six Million
99 Dollars (\$106,000,000.00);



100 (e) In fiscal year 2009, Ninety-two Million Two Hundred
101 Fifty Thousand Dollars (\$92,250,000.00);

102 (f) In the fiscal year beginning after the calendar
103 year in which none of the amount of the annual tobacco settlement
104 installment payment will be deposited into the Health Care
105 Expendable Fund as provided in subsection (3) (d) of this section,
106 and in each fiscal year thereafter, a sum equal to the average
107 annual amount of the dividends, interest and other income,
108 including increases in value of the principal, earned on the funds
109 in the Health Care Trust Fund during the preceding four (4) fiscal
110 years.

111 (2) In any fiscal year in which interest, dividends and
112 other income from the investment of the funds in the Health Care
113 Trust Fund are not sufficient to fund the full amount of the
114 annual transfer into the Health Care Expendable Fund as required
115 in subsection (1) (f) of this section, the State Treasurer shall
116 transfer from tobacco settlement installment payments an amount
117 that is sufficient to fully fund the amount of the annual
118 transfer.

119 (3) Beginning with calendar year 2009, at the time that the
120 State of Mississippi receives the tobacco settlement installment
121 payment for each calendar year, the State Treasurer shall deposit
122 the following amounts of each of those installment payments into
123 the Health Care Expendable Fund:

124 (a) In calendar years 2009 and 2010, the total amount
125 of the installment payment;

126 (b) In calendar year 2011, the amount of the
127 installment payment less Ten Million Dollars (\$10,000,000.00);

128 (c) In calendar year 2012, the total amount of the
129 installment payment;

130 (d) In calendar year 2013, and each calendar year
131 thereafter, the amount of the installment payment to be deposited
132 into the Health Care Expendable Fund shall be reduced by an



133 additional Ten Million Dollars (\$10,000,000.00) each calendar year
134 until the calendar year that the amount of the installment payment
135 that otherwise would be deposited into the Health Care Expendable
136 Fund is less than the average annual amount of the dividends,
137 interest and other income, including increases in value of the
138 principal, earned on the funds in the Health Care Trust Fund
139 during the preceding four (4) fiscal years. Beginning with that
140 calendar year and each calendar year thereafter, none of the
141 amount of the installment payment shall be deposited into the
142 Health Care Expendable Fund.

143 (4) (a) In addition to any other sums required to be
144 transferred from the Health Care Trust Fund to the Health Care
145 Expendable Fund, the sum of One Hundred Twelve Million Dollars
146 (\$112,000,000.00) shall be transferred from the Health Care Trust
147 Fund to the Health Care Expendable Fund in fiscal year 2011.

148 (b) In addition to any other sums required to be
149 transferred from the Health Care Trust Fund to the Health Care
150 Expendable Fund, the sum of Fifty-six Million Two Hundred
151 Sixty-three Thousand Four Hundred Thirty-eight Dollars
152 (\$56,263,438.00) shall be transferred from the Health Care Trust
153 Fund to the Health Care Expendable Fund during fiscal year 2012.

154 (c) In addition to any other sums required to be
155 transferred from the Health Care Trust Fund to the Health Care
156 Expendable Fund, the sum of Ninety-seven Million Four Hundred
157 Fifty Thousand Three Hundred Thirty-two Dollars (\$97,450,332.00)
158 shall be transferred from the Health Care Trust fund to the Health
159 Care Expendable Fund during fiscal year 2013.

160 (5) If Medicaid expenditures are projected to exceed the
161 amount of funds appropriated to the Division of Medicaid in any
162 fiscal year in excess of the expenditure reductions to providers,
163 funds shall be transferred by the State Fiscal Officer from the
164 Health Care Trust Fund into the Health Care Expendable Fund and
165 then to the Governor's Office, Division of Medicaid, in the amount



166 and at such time as requested by the Governor to reconcile the
167 deficit.

168 (6) All income from the investment of the funds in the
169 Health Care Expendable Fund shall be credited to the account of
170 the Health Care Expendable Fund. Any funds in the Health Care
171 Expendable Fund at the end of a fiscal year shall not lapse into
172 the State General Fund.

173 (7) The funds in the Health Care Expendable Fund shall be
174 available for expenditure under specific appropriation by the
175 Legislature beginning in fiscal year 2000, and shall be expended
176 exclusively for health care purposes.

177 (8) The provisions of subsection (1) of this section may not
178 be changed in any manner except upon amendment to that subsection
179 by a bill enacted by the Legislature with a vote of not less than
180 three-fifths (3/5) of the members of each house present and
181 voting.

182 (9) If the State Treasurer, in consultation with the
183 Executive Director of the Department of Finance and
184 Administration, determines that there is a need to borrow funds to
185 offset any temporary cash flow deficiencies in the Health Care
186 Expendable Fund created in this section, the Treasurer may borrow
187 those funds from any state-source special funds in the State
188 Treasury in amounts that can be repaid from the Health Care
189 Expendable Fund during the fiscal year in which the funds are
190 borrowed. The State Treasurer shall immediately notify the
191 Legislative Budget Office and the Department of Finance and
192 Administration of each transfer into and out of the Health Care
193 Expendable Fund.

194 (10) No later than September 30, 2011, the State Treasurer
195 shall transfer from the Health Care Expendable Fund to the Health
196 Care Trust Fund an amount equivalent to the unencumbered ending
197 cash balance of the Health Care Expendable Fund as of June 30,



198 2011, less Three Million Eight Hundred Forty Thousand Dollars
199 (\$3,840,000.00).

200 (11) Subsections (1), (2), (5), (6) and (7) of this section
201 shall stand repealed on July 1, 2013.

202 **SECTION 3.** Section 27-7-309, Mississippi Code of 1972, is
203 amended as follows:

204 **[Until July 1, 2013, this section shall read as follows:]**

205 27-7-309. (1) (a) Except as otherwise provided in this
206 subsection, every employer required to deduct and withhold from
207 wages under this article shall, for each calendar quarter, on or
208 before the fifteenth day of the month following the close of such
209 calendar quarter, file a withholding return as prescribed by the
210 commissioner and pay over to the commissioner the full amount
211 required to be deducted and withheld from wages by such employer
212 for the calendar quarter. Provided that the commissioner may, by
213 regulation, provide that every such employer shall, on or before
214 the fifteenth day of each month, pay over to the commissioner or a
215 depository designated by the commissioner, the amount required to
216 be deducted and withheld by such employer for the preceding month,
217 if such amount is One Hundred Dollars (\$100.00) or more. Returns
218 and payments placed in the mail must be postmarked by the due date
219 in order to be timely filed, except when the due date falls on a
220 weekend or holiday, returns and payments placed in the mail must
221 be postmarked by the first working day following the due date in
222 order to be considered timely filed.

223 (b) An employer having an average monthly withholding
224 tax liability of at least Twenty Thousand Dollars (\$20,000.00) for
225 the preceding calendar year shall pay to the Department of Revenue
226 on or before June 25, 2003, and on or before the twenty-fifth day
227 of June of each succeeding year thereafter, an amount equal to at
228 least seventy-five percent (75%) of such employer's estimated
229 withholding tax liability for the month of June of the current
230 taxable year, or an amount equal to at least seventy-five percent



231 (75%) of the employer's withholding tax liability for the month of
232 June of the preceding taxable year. Payments required to be made
233 under this paragraph must be received by the Department of Revenue
234 no later than June 25 in order to be considered timely made. An
235 employer that fails to comply with the requirements of this
236 paragraph may be assessed a penalty in an amount equal to ten
237 percent (10%) of the difference between any amount the taxpayer
238 pays pursuant to this paragraph and the employer's actual
239 withholding tax liability for the month of June for which the
240 estimated payment was required to be made. This paragraph shall
241 not apply to any agency, department or instrumentality of the
242 United States, any agency, department, institution,
243 instrumentality or political subdivision of the State of
244 Mississippi, or any agency, department, institution or
245 instrumentality of any political subdivision of the State of
246 Mississippi. Payments made pursuant to this paragraph for the
247 month of June 2003, less One Hundred Thousand Dollars
248 (\$100,000.00) thereof to be retained by the Department of Revenue
249 to defray the costs of collection, shall be deposited by the
250 Department of Revenue into the Budget Contingency Fund created
251 under Section 27-103-301, and payments made pursuant to this
252 paragraph for the month of June * * * 2004, and each succeeding
253 year thereafter, less One Hundred Thousand Dollars (\$100,000.00)
254 thereof to be retained by the Department of Revenue each year to
255 defray the costs of collection, shall be deposited by the
256 Department of Revenue into the State General Fund.

257 (c) The commissioner may promulgate rules and
258 regulations to require or permit filing periods of any duration,
259 in lieu of monthly or quarterly filing periods, for any taxpayer
260 or group thereof.

261 (2) Notwithstanding any of the other provisions of this
262 section, all transient employers and all employers engaged in any
263 business which is seasonal shall make return and pay over to the



264 commissioner on a monthly basis, the full amounts required to be
265 deducted and withheld from the wages by such employer for the
266 calendar month. Such returns and payments to the commissioner by
267 such employers shall be made on or before the fifteenth day of the
268 month following the month for which such amounts were deducted and
269 withheld from the wages of his employees. The commissioner shall
270 have the authority to issue reasonable rules and regulations
271 designating or classifying those transient and seasonal employers.

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

277 (4) Every employer who fails to withhold or pay to the
278 commissioner any sums required by this article to be withheld and
279 paid, shall be personally and individually liable therefor, except
280 as provided in Section 27-7-307; and any sum or sums withheld in
281 accordance with the provisions of this article shall be deemed to
282 be held in trust for the State of Mississippi and shall be
283 recorded by the employer in a ledger account so as to clearly
284 indicate the amount of tax withheld and that the amount is the
285 property of the State of Mississippi.

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

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



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

298 **[From and after July 1, 2013, this section shall read as**
299 **follows:]**

300 27-7-309. (1) (a) Except as otherwise provided in this
301 subsection, every employer required to deduct and withhold from
302 wages under this article shall, for each calendar quarter, on or
303 before the fifteenth day of the month following the close of such
304 calendar quarter, file a withholding return as prescribed by the
305 commissioner and pay over to the commissioner the full amount
306 required to be deducted and withheld from wages by such employer
307 for the calendar quarter. Provided that the commissioner may, by
308 regulation, provide that every such employer shall, on or before
309 the fifteenth day of each month, pay over to the commissioner or a
310 depository designated by the commissioner, the amount required to
311 be deducted and withheld by such employer for the preceding month,
312 if such amount is One Hundred Dollars (\$100.00) or more. Returns
313 and payments placed in the mail must be postmarked by the due date
314 in order to be timely filed, except when the due date falls on a
315 weekend or holiday, returns and payments placed in the mail must
316 be postmarked by the first working day following the due date in
317 order to be considered timely filed.

318 (b) An employer having an average monthly withholding
319 tax liability of at least Fifty Thousand Dollars (\$50,000.00) for
320 the preceding calendar year shall pay to the Department of Revenue
321 on or before June 25, 2014, and on or before the twenty-fifth day
322 of June of each succeeding year thereafter, an amount equal to at
323 least seventy-five percent (75%) of such employer's estimated
324 withholding tax liability for the month of June of the current
325 taxable year, or an amount equal to at least seventy-five percent
326 (75%) of the employer's withholding tax liability for the month of
327 June of the preceding taxable year. Payments required to be made
328 under this paragraph must be received by the Department of Revenue



329 no later than June 25 in order to be considered timely made. An
330 employer that fails to comply with the requirements of this
331 paragraph may be assessed a penalty in an amount equal to ten
332 percent (10%) of the difference between any amount the taxpayer
333 pays pursuant to this paragraph and the employer's actual
334 withholding tax liability for the month of June for which the
335 estimated payment was required to be made. This paragraph shall
336 not apply to any agency, department or instrumentality of the
337 United States, any agency, department, institution,
338 instrumentality or political subdivision of the State of
339 Mississippi, or any agency, department, institution or
340 instrumentality of any political subdivision of the State of
341 Mississippi. Payments made pursuant to this paragraph for the
342 month of June, less One Hundred Thousand Dollars (\$100,000.00)
343 thereof to be retained by the Department of Revenue each year to
344 defray the costs of collection, shall be deposited by the
345 Department of Revenue into the State General Fund.

346 (c) The commissioner may promulgate rules and
347 regulations to require or permit filing periods of any duration,
348 in lieu of monthly or quarterly filing periods, for any taxpayer
349 or group thereof.

350 (2) Notwithstanding any of the other provisions of this
351 section, all transient employers and all employers engaged in any
352 business which is seasonal shall make return and pay over to the
353 commissioner on a monthly basis, the full amounts required to be
354 deducted and withheld from the wages by such employer for the
355 calendar month. Such returns and payments to the commissioner by
356 such employers shall be made on or before the fifteenth day of the
357 month following the month for which such amounts were deducted and
358 withheld from the wages of his employees. The commissioner shall
359 have the authority to issue reasonable rules and regulations
360 designating or classifying those transient and seasonal employers.



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

366 (4) Every employer who fails to withhold or pay to the
367 commissioner any sums required by this article to be withheld and
368 paid, shall be personally and individually liable therefor, except
369 as provided in Section 27-7-307; and any sum or sums withheld in
370 accordance with the provisions of this article shall be deemed to
371 be held in trust for the State of Mississippi and shall be
372 recorded by the employer in a ledger account so as to clearly
373 indicate the amount of tax withheld and that the amount is the
374 property of the State of Mississippi.

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

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

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

387 **SECTION 4.** Section 27-65-33, Mississippi Code of 1972, is
388 amended as follows:

389 **[Until July 1, 2013, this section shall read as follows:]**

390 27-65-33. (1) Except as otherwise provided in this section,
391 the taxes levied by this chapter shall be due and payable on or
392 before the twentieth day of the month next succeeding the month in
393 which the tax accrues, except as otherwise provided. Returns and



394 payments placed in the mail must be postmarked by the due date in
395 order to be considered timely filed, except when the due date
396 falls on a weekend or holiday, returns and payments placed in the
397 mail must be postmarked by the first working day following the due
398 date in order to be considered timely filed. The taxpayer shall
399 make a return showing the gross proceeds of sales or the gross
400 income of the business, and any and all allowable deductions, or
401 exempt sales, and compute the tax due for the period covered.

402 As compensation for collecting sales and use taxes, complying
403 fully with the applicable statutes, filing returns and supplements
404 thereto and paying all taxes by the twentieth of the month
405 following the period covered, the taxpayer may discount and retain
406 two percent (2%) of the liability on each return subject to the
407 following limitations:

408 (a) The compensation or discount shall not apply to
409 taxes levied under the provisions of Sections 27-65-19 and
410 27-65-21, or on charges for ginning cotton under Section 27-65-23.

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

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

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

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



427 (2) A taxpayer required to collect sales taxes under this
428 chapter and having an average monthly sales tax liability of at
429 least Twenty Thousand Dollars (\$20,000.00) for the preceding
430 calendar year shall pay to the Department of Revenue on or before
431 June 25, 2003, and on or before the twenty-fifth day of June of
432 each succeeding year thereafter, an amount equal to at least
433 seventy-five percent (75%) of such taxpayer's estimated sales tax
434 liability for the month of June of the current calendar year, or
435 an amount equal to at least seventy-five percent (75%) of the
436 taxpayer's sales tax liability for the month of June of the
437 preceding calendar year. Payments required to be made under this
438 subsection must be received by the Department of Revenue no later
439 than June 25 in order to be considered timely made. A taxpayer
440 that fails to comply with the requirements of this subsection may
441 be assessed a penalty in an amount equal to ten percent (10%) of
442 the difference between any amount the taxpayer pays pursuant to
443 this subsection and the taxpayer's actual sales tax liability for
444 the month of June for which the estimated payment was required to
445 be made. Payments made by a taxpayer under this subsection shall
446 not be considered to be collected for the purposes of any sales
447 tax diversions required by law until the taxpayer files a return
448 for the actual sales taxes collected during the month of June.
449 This subsection shall not apply to any agency, department or
450 instrumentality of the United States, any agency, department,
451 institution, instrumentality or political subdivision of the State
452 of Mississippi, or any agency, department, institution or
453 instrumentality of any political subdivision of the State of
454 Mississippi. Payments made pursuant to this subsection for the
455 month of June 2003, shall be deposited by the Department of
456 Revenue into the Budget Contingency Fund created under Section
457 27-103-301, and payments made pursuant to this subsection for the
458 month of June * * * 2004, and each succeeding year thereafter,



459 shall be deposited by the Department of Revenue into the State
460 General Fund.

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

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

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

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

489 (7) For persistent, willful, or recurring failure to make
490 any return and pay the tax shown thereby to be due by the time
491 specified, there shall be added to the amount of tax shown to be



492 due ten percent (10%) damages, or interest at the rate of one
493 percent (1%) per month, or both.

494 (8) Any taxpayer may, upon making application therefor,
495 obtain from the commissioner an extension of time for the payment
496 of taxes due on credit sales until collections thereon have been
497 made. When such extension is granted, the taxpayer shall
498 thereafter include in each monthly or quarterly report all
499 collections made during the preceding month or quarter, and shall
500 pay the taxes due thereon at the time of filing such report. Such
501 permission may be revoked or denied at the discretion of the
502 commissioner when, in his opinion, a total sales basis will best
503 reflect the taxable income or expedite examination of the
504 taxpayer's records.

505 (9) Any taxpayer reporting credit sales before collection
506 thereof has been made may take credit on subsequent returns or
507 reports for bad debts actually charged off, if such amounts
508 charged off have previously been included in taxable gross income
509 or taxable gross proceeds of sales, as the case may be, and the
510 tax paid thereon. However, any amounts subsequently collected on
511 accounts that have been charged off as bad debts shall be included
512 in subsequent reports and the tax shall be paid thereon.

513 (10) In cases where an extension of time has been granted by
514 the commissioner for payment of taxes due on credit sales and the
515 taxpayer thereafter discontinues the business, such taxpayer shall
516 be required to file with the commissioner within ten (10) days, or
517 such further time as the commissioner may direct, from the date of
518 the discontinuance of such business, a special report showing the
519 amounts of any credit sales which have not been included in
520 determining the measure of the tax previously paid and any other
521 information with reference to credit sales as the commissioner may
522 require. The commissioner shall thereupon investigate the facts
523 with reference to credit sales and the condition of the accounts,
524 and shall determine, from the best evidence available, the value



525 of all open accounts, notes, or other evidence of debt arising
526 from credit sales. The value of all notes, open accounts and
527 other evidence of debt, as thus determined by the commissioner,
528 shall be used in determining the amount of the tax for which such
529 taxpayer shall be liable. When the amount of the tax shall have
530 been ascertained, the taxpayer shall be required to pay the same
531 within ten (10) days or such further time as the commissioner may
532 allow, notwithstanding the fact that such note or accounts may
533 still remain uncollected.

534 **[From and after July 1, 2013, this section shall read as**
535 **follows:]**

536 27-65-33. (1) Except as otherwise provided in this section,
537 the taxes levied by this chapter shall be due and payable on or
538 before the twentieth day of the month next succeeding the month in
539 which the tax accrues, except as otherwise provided. Returns and
540 payments placed in the mail must be postmarked by the due date in
541 order to be considered timely filed, except when the due date
542 falls on a weekend or holiday, returns and payments placed in the
543 mail must be postmarked by the first working day following the due
544 date in order to be considered timely filed. The taxpayer shall
545 make a return showing the gross proceeds of sales or the gross
546 income of the business, and any and all allowable deductions, or
547 exempt sales, and compute the tax due for the period covered.

548 As compensation for collecting sales and use taxes, complying
549 fully with the applicable statutes, filing returns and supplements
550 thereto and paying all taxes by the twentieth of the month
551 following the period covered, the taxpayer may discount and retain
552 two percent (2%) of the liability on each return subject to the
553 following limitations:

554 (a) The compensation or discount shall not apply to
555 taxes levied under the provisions of Sections 27-65-19 and
556 27-65-21, or on charges for ginning cotton under Section 27-65-23.



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

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

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

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

573 (2) A taxpayer required to collect sales taxes under this
574 chapter and having an average monthly sales tax liability of at
575 least Fifty Thousand Dollars (\$50,000.00) for the preceding
576 calendar year shall pay to the Department of Revenue on or before
577 June 25, 2014, and on or before the twenty-fifth day of June of
578 each succeeding year thereafter, an amount equal to at least
579 seventy-five percent (75%) of such taxpayer's estimated sales tax
580 liability for the month of June of the current calendar year, or
581 an amount equal to at least seventy-five percent (75%) of the
582 taxpayer's sales tax liability for the month of June of the
583 preceding calendar year. For the purposes of calculating a
584 taxpayer's estimated sales tax liability for the month of June of
585 the current calendar year, the taxpayer does not have to include
586 taxes due on credit sales for which the taxpayer has not received
587 payment before June 20. Payments required to be made under this
588 subsection must be received by the Department of Revenue no later
589 than June 25 in order to be considered timely made. A taxpayer



590 that fails to comply with the requirements of this subsection may
591 be assessed a penalty in an amount equal to ten percent (10%) of
592 the difference between any amount the taxpayer pays pursuant to
593 this subsection and the taxpayer's actual sales tax liability for
594 the month of June for which the estimated payment was required to
595 be made. Payments made by a taxpayer under this subsection shall
596 not be considered to be collected for the purposes of any sales
597 tax diversions required by law until the taxpayer files a return
598 for the actual sales taxes collected during the month of June.
599 This subsection shall not apply to any agency, department or
600 instrumentality of the United States, any agency, department,
601 institution, instrumentality or political subdivision of the State
602 of Mississippi, or any agency, department, institution or
603 instrumentality of any political subdivision of the State of
604 Mississippi.

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

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

617 (5) The commissioner may require the execution and filing by
618 the taxpayer with the commissioner of a good and solvent bond with
619 some surety company authorized to do business in Mississippi as
620 surety thereon in an amount double the aggregate tax liability by
621 such taxpayer for any previous three-month period within the last
622 calendar year or estimated three (3) months' tax liability. The



623 bond is to be conditioned for the prompt payment of such taxes as
624 may be due for each such return.

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

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

638 (8) Any taxpayer may, upon making application therefor,
639 obtain from the commissioner an extension of time for the payment
640 of taxes due on credit sales until collections thereon have been
641 made. When such extension is granted, the taxpayer shall
642 thereafter include in each monthly or quarterly report all
643 collections made during the preceding month or quarter, and shall
644 pay the taxes due thereon at the time of filing such report. Such
645 permission may be revoked or denied at the discretion of the
646 commissioner when, in his opinion, a total sales basis will best
647 reflect the taxable income or expedite examination of the
648 taxpayer's records.

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



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

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

678 **SECTION 5.** Section 27-67-17, Mississippi Code of 1972, is
679 amended as follows:

680 **[Until July 1, 2013, this section shall read as follows:]**

681 27-67-17. (1) Except as otherwise provided in this section,
682 the commissioner shall collect the tax imposed by this article,
683 and every person subject to its provisions shall remit to the
684 commissioner, on or before the twentieth day of each month, the
685 amount of tax due by such person for the preceding calendar month.
686 Returns and payments placed in the mail must be postmarked by the
687 due date in order to be timely filed, except that when the due



688 date falls on a weekend or holiday, returns and payments placed in
689 the mail must be postmarked by the first working day following the
690 due date in order to be considered timely filed. Every taxpayer
691 shall file a return with his remittance, which return shall be
692 prescribed by the commissioner and shall show for the calendar
693 month preceding the tax payment date, the total sale or purchase
694 price, or value of tangible personal property or specified digital
695 products sold, used, stored or consumed by him for benefit
696 received or service performed, and such other information as the
697 commissioner may deem pertinent and necessary for determining the
698 amount of tax due thereunder.

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

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

707 (4) A taxpayer required to collect use taxes under this
708 article and having an average monthly use tax liability of at
709 least Twenty Thousand Dollars (\$20,000.00) for the preceding
710 calendar year shall pay to the Department of Revenue on or before
711 June 25, 2003, and on or before the twenty-fifth day of June of
712 each succeeding year thereafter, an amount equal to at least
713 seventy-five percent (75%) of such taxpayer's estimated use tax
714 liability for the month of June of the current calendar year, or
715 an amount equal to at least seventy-five percent (75%) of the
716 taxpayer's use tax liability for the month of June of the
717 preceding calendar year. Payments required to be made under this
718 subsection must be received by the Department of Revenue no later
719 than June 25 in order to be considered timely made. A taxpayer
720 that fails to comply with the requirements of this subsection may



721 be assessed a penalty in an amount equal to ten percent (10%) of
722 the difference between any amount the taxpayer pays pursuant to
723 this subsection and the taxpayer's actual use tax liability for
724 the month of June for which the estimated payment was required to
725 be made. Payments made by a taxpayer under this subsection shall
726 not be considered to be collected for the purposes of any use tax
727 diversions required by law until the taxpayer files a return for
728 the actual use taxes collected during the month of June. This
729 subsection shall not apply to any agency, department or
730 instrumentality of the United States, any agency, department,
731 institution, instrumentality or political subdivision of the State
732 of Mississippi, or any agency, department, institution or
733 instrumentality of any political subdivision of the State of
734 Mississippi.

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

741 **[From and after July 1, 2013, this section shall read as**
742 **follows:]**

743 27-67-17. (1) Except as otherwise provided in this section,
744 the commissioner shall collect the tax imposed by this article,
745 and every person subject to its provisions shall remit to the
746 commissioner, on or before the twentieth day of each month, the
747 amount of tax due by such person for the preceding calendar month.
748 Returns and payments placed in the mail must be postmarked by the
749 due date in order to be timely filed, except that when the due
750 date falls on a weekend or holiday, returns and payments placed in
751 the mail must be postmarked by the first working day following the
752 due date in order to be considered timely filed. Every taxpayer
753 shall file a return with his remittance, which return shall be



754 prescribed by the commissioner and shall show for the calendar
755 month preceding the tax payment date, the total sale or purchase
756 price, or value of tangible personal property or specified digital
757 products sold, used, stored or consumed by him for benefit
758 received or service performed, and such other information as the
759 commissioner may deem pertinent and necessary for determining the
760 amount of tax due thereunder.

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

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

769 (4) A taxpayer required to collect use taxes under this
770 article and having an average monthly use tax liability of at
771 least Fifty Thousand Dollars (\$50,000.00) for the preceding
772 calendar year shall pay to the Department of Revenue on or before
773 June 25, 2014, and on or before the twenty-fifth day of June of
774 each succeeding year thereafter, an amount equal to at least
775 seventy-five percent (75%) of such taxpayer's estimated use tax
776 liability for the month of June of the current calendar year, or
777 an amount equal to at least seventy-five percent (75%) of the
778 taxpayer's use tax liability for the month of June of the
779 preceding calendar year. Payments required to be made under this
780 subsection must be received by the Department of Revenue no later
781 than June 25 in order to be considered timely made. A taxpayer
782 that fails to comply with the requirements of this subsection may
783 be assessed a penalty in an amount equal to ten percent (10%) of
784 the difference between any amount the taxpayer pays pursuant to
785 this subsection and the taxpayer's actual use tax liability for
786 the month of June for which the estimated payment was required to



787 be made. Payments made by a taxpayer under this subsection shall
788 not be considered to be collected for the purposes of any use tax
789 diversions required by law until the taxpayer files a return for
790 the actual use taxes collected during the month of June. This
791 subsection shall not apply to any agency, department or
792 instrumentality of the United States, any agency, department,
793 institution, instrumentality or political subdivision of the State
794 of Mississippi, or any agency, department, institution or
795 instrumentality of any political subdivision of the State of
796 Mississippi.

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

803 **SECTION 6.** It is the intention of the Legislature that
804 whenever the Director of the Mississippi Emergency Management
805 Agency determines that funds are immediately needed in the
806 Disaster Assistance Trust Fund to provide for disaster assistance
807 under this section, he shall notify the Executive Director of the
808 Department of Finance and Administration of his determination and
809 shall requisition the amount of funds from the Working
810 Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget
811 Contingency Fund (Fund No. 3177) that are needed in the trust
812 fund, which shall be subject to the limitations set forth below in
813 this section. At the same time he makes the requisition, the
814 director shall notify the Lieutenant Governor, the Speaker of the
815 House of Representatives and the respective Chairmen of the Senate
816 Appropriations Committee, the Senate Finance Committee, the House
817 Appropriations Committee and the House Ways and Means Committee of
818 his determination of the need for the funds and the amount that he
819 has requisitioned. Upon receipt of such a requisition from the



820 director, the Executive Director of the Department of Finance and
821 Administration shall ascertain if the amount requisitioned is
822 available in the Working Cash-Stabilization Reserve Fund (Fund No.
823 3992) and/or the Budget Contingency Fund (Fund No. 3177) and is
824 within the limitations set forth below in this section and, if it
825 is, he shall transfer that amount from the Working
826 Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget
827 Contingency Fund (Fund No. 3177) to the trust fund. If the amount
828 requisitioned is more than the amount available in the Working
829 Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget
830 Contingency Fund (Fund No. 3177) or above the limitations set
831 forth below in this section, the executive director shall transfer
832 the amount that is available within the limitations. The maximum
833 amount that may be transferred from the Working Cash-Stabilization
834 Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund
835 (Fund No. 3177) to the trust fund for any one (1) disaster
836 occurrence shall be Five Hundred Thousand Dollars (\$500,000.00)
837 and the maximum amount that may be transferred during any fiscal
838 year shall be One Million Dollars (\$1,000,000.00).

839 It is the intention of the Legislature, that during the
840 subsequent legislative session, consideration shall be given to
841 provide an appropriation equal to the amount transferred from the
842 Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the
843 Budget Contingency Fund (Fund No. 3177) to the Disaster Assistance
844 Trust Fund under the provisions of this section as repayment to
845 the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or
846 the Budget Contingency Fund.

847 **SECTION 7.** Section 4, Chapter 126, Laws of 2009 Second
848 Extraordinary Session, which requires the State of Mississippi to
849 repay a certain amount of funds to the Mississippi Department of
850 Transportation, is repealed.

851 **SECTION 8.** This act shall take effect and be in force from
852 and after July 1, 2012, except for Section 1(1) and (6) which



853 shall take effect and be in force from and after the passage of
854 this act.

