

By: Representative Smith

To: Ways and Means

HOUSE BILL NO. 702

1 AN ACT TO AMEND SECTIONS 27-7-55, 27-7-307, 27-13-29 AND  
 2 27-65-55, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT PERSONS WITH  
 3 CERTAIN OWNERSHIP INTERESTS IN A CORPORATION OR LIMITED LIABILITY  
 4 COMPANY SHALL BE LIABLE FOR INCOME, WITHHOLDING, FRANCHISE AND  
 5 SALES TAXES DUE FROM THE CORPORATION OR LIMITED LIABILITY COMPANY;  
 6 AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 27-7-55, Mississippi Code of 1972, is  
 9 amended as follows:

10 27-7-55. (1) (a) If any taxpayer, liable for the payment  
 11 of income taxes, penalties or interest, fails or refuses to pay  
 12 them after receiving the notice and demands as provided in  
 13 Sections 27-7-49, 27-7-51 and 27-7-53, and if the taxpayer has not  
 14 filed a timely appeal to the board of review as provided by law,  
 15 the commissioner may file a notice of tax lien for the income  
 16 taxes, penalties and interest with the circuit clerk of the county  
 17 in which the taxpayer resides or owns property, which shall be  
 18 enrolled on the judgment roll. Immediately upon receipt of the  
 19 notice of tax lien for income taxes, penalties and interest, the  
 20 circuit clerk shall enter upon the judgment roll, in the



21 appropriate columns, the name of the taxpayer as judgment debtor,  
22 the name of the commissioner or Department of Revenue as judgment  
23 creditor, the amount of the taxes, penalties and interest, and the  
24 date and time of enrollment. The judgment shall be valid as  
25 against mortgagees, pledgees, entrusters, purchasers, judgment  
26 creditors, and other persons from the time of filing with the  
27 clerk. The amount of the judgment shall be a debt due the State  
28 of Mississippi and remain a lien upon all property and rights to  
29 property belonging to the taxpayer, both real and personal,  
30 including choses in action, with the same force and like effect as  
31 any enrolled judgment of a court of record, and shall continue  
32 until satisfied; however, the judgment shall not be a lien upon  
33 the property of the taxpayer for a longer period than seven (7)  
34 years from the date of the filing of the notice of tax lien for  
35 income taxes, penalties and interest unless an action is brought  
36 on the lien before the expiration of such time or unless the  
37 commissioner refiles the notice of tax lien before the expiration  
38 of such time. The judgment shall be a lien upon the property of  
39 the taxpayer for a period of seven (7) years from the date of  
40 refiling \* \* \* the notice of tax lien unless an action is brought  
41 on the lien before the expiration of such time or unless the  
42 commissioner refiles \* \* \* the notice of tax lien before the  
43 expiration of such time. There shall be no limit upon the number  
44 of times that the commissioner may refile notices of tax liens.  
45 The judgment shall serve as authority for the issuance of writs of



46 execution, writs of attachment, writs of garnishment or other  
47 remedial writs. The commissioner may issue warrants for  
48 collection of income taxes from \* \* \* the judgments in lieu of the  
49 issuance of any remedial writ by the circuit clerk.

50 (b) Upon failure to pay the taxes imposed under this  
51 article by any taxpayer who has executed any bond, the  
52 commissioner shall give notice of the failure to the sureties of  
53 the bond and demand payment of the tax, penalties and interest  
54 within ten (10) days. If the sureties of the taxpayer's bond  
55 shall fail or refuse to pay the penal sum demanded within the ten  
56 (10) days allowed, the commissioner may file a notice of tax lien  
57 with the circuit clerk of the county in which the sureties reside  
58 or own property, which shall be enrolled upon the judgment roll,  
59 and the commissioner may proceed to collect from the sureties as  
60 provided in this section for collecting from any judgment debtor.

61 (c) The commissioner is \* \* \* authorized to pay the  
62 clerk's fee for enrolling certificates of indebtedness and any  
63 court costs that may be adjudged against the department or  
64 commissioner out of funds appropriated by the Legislature to  
65 defray expenses of the Department of Revenue.

66 (2) (a) Persons owning stock of fifty percent (50%) or more  
67 of the total of corporations or fifty percent (50%) interest in  
68 limited liability companies with thirty-five (35) or less owners  
69 also shall be liable for amounts due from the corporation or  
70 limited liability company under this article, including interest



71 and penalties thereon, when the amounts become due and unpaid to  
72 the extent that the amounts accrued while the person owned the  
73 stock or interest.

74 (b) Persons owning stock of ten percent (10%) or more  
75 of the total of corporations or ten percent (10%) or more interest  
76 in limited liability companies with thirty-five (35) or less  
77 owners and exercising responsibilities for fiscal management of  
78 the corporation or limited liability company also shall be liable  
79 for amounts due from the corporation or limited liability company  
80 under this article, including interest and penalties thereon, when  
81 the amounts become due and unpaid to the extent that the amounts  
82 accrued while the person was exercising responsibilities for  
83 fiscal management.

84 (c) The liability under this subsection is derivative  
85 of the corporation or limited liability company, and the  
86 three-year assessment period provided in Section 27-7-49 will  
87 begin to run after the liability of the corporation or limited  
88 liability company becomes final. A person being assessed under  
89 this subsection may appeal his liability under Section 27-77-5  
90 solely regarding the issue of the ownership interest and  
91 management requirements of this subsection. The commissioner  
92 shall make assessments against and effect collection from persons  
93 liable under this subsection by the same procedures provided for  
94 assessment and collections of taxes levied by this article.



95           **SECTION 2.** Section 27-7-307, Mississippi Code of 1972, is  
96 amended as follows:

97           27-7-307. (1) Every employer shall be liable for amounts  
98 required to be deducted and withheld by this article regardless of  
99 whether or not the amounts were in fact deducted and withheld,  
100 except that if the employer fails to deduct and withhold the  
101 required amounts and if the tax against which the required amounts  
102 would have been credited is paid, the employer shall not be liable  
103 for those amounts not deducted and withheld if \* \* \* the failure  
104 was due to reasonable cause.

105           (2) (a) Persons owning stock of fifty percent (50%) or more  
106 of the total of corporations or fifty percent (50%) interest in  
107 limited liability companies with thirty-five (35) or less owners  
108 also shall be liable for amounts withheld or required to be  
109 withheld under this article, including interest and penalties  
110 thereon, when the amounts become due and unpaid to the extent that  
111 the amounts accrued while the person owned the stock or interest.

112           (b) Persons owning stock of ten percent (10%) or more  
113 of the total of corporations or ten percent (10%) interest in  
114 limited liability companies with thirty-five (35) or less owners  
115 and exercising responsibilities for fiscal management of \* \* \* the  
116 corporation or limited liability company also shall be liable for  
117 amounts withheld or required to be withheld under this article,  
118 including interest and penalties thereon, when \* \* \* the amounts  
119 become due and unpaid to the extent that \* \* \* the amounts accrued



120 while \* \* \* the person was exercising responsibilities for fiscal  
121 management.

122           (c) The liability under this subsection is derivative  
123 of the corporation or limited liability company, and the  
124 three-year assessment period provided in Section 27-7-49 will  
125 begin to run after the liability of the corporation or limited  
126 liability company becomes final. A person being assessed under  
127 this subsection may appeal his liability under Section 27-77-5  
128 solely regarding the issue of the ownership interest and  
129 management requirements of this subsection. The commissioner  
130 shall make assessments against and effect collection from \* \* \*  
131 persons liable under this subsection pursuant to the provisions of  
132 this article for the making of withholding tax determinations  
133 against employers.

134           **SECTION 3.** Section 27-13-29, Mississippi Code of 1972, is  
135 amended as follows:

136           27-13-29. (1) (a) If any taxpayer, liable for the payment  
137 of franchise taxes, penalties or interest, fails or refuses to pay  
138 them after receiving the notice and demands as provided in Section  
139 27-13-23 or 27-13-25, and if \* \* \* the taxpayer has not filed a  
140 timely appeal to the board of review as provided by law, the  
141 commissioner may file a notice of tax lien for the franchise  
142 taxes, penalties, and interest with the circuit clerk of the  
143 county in which the taxpayer resides or owns property, which,  
144 shall be enrolled on the judgment roll. Immediately upon receipt



145 of the notice of tax lien for franchise taxes, penalties and  
146 interest, the circuit clerk shall enter upon the judgment roll, in  
147 the appropriate columns, the name of the taxpayer as judgment  
148 debtor, the name of the commissioner or Department of Revenue as  
149 judgment creditor, the amount of the taxes, penalties and  
150 interest, and the date and time of enrollment. The judgment shall  
151 be valid as against mortgagees, pledgees, entrusters, purchasers,  
152 judgment creditors, and other persons from the time of filing with  
153 the clerk. The amount of the judgment shall be a debt due the  
154 State of Mississippi and remain a lien upon all property and  
155 rights to property belonging to the taxpayer, both real and  
156 personal, including choses in action, with the same force and like  
157 effect as any enrolled judgment of a court of record, and shall  
158 continue until satisfied. \* \* \* The judgment shall serve as  
159 authority for the issuance of writs of execution, writs of  
160 attachments, writs of garnishment or other remedial writs. The  
161 commissioner may issue warrants for collection of franchise taxes  
162 from \* \* \* the judgments in lieu of the issuance of any remedial  
163 writ by the circuit clerk.

164           **(b)** Upon failure to pay the taxes imposed under this  
165 chapter by any taxpayer who has executed any bond, the  
166 commissioner shall give notice of the failure to the sureties  
167 of \* \* \* the bond and demand payment of the tax, penalties and  
168 interest within ten (10) days. If the sureties of the taxpayer's  
169 bond shall fail or refuse to pay the penal sum demanded within the



170 ten (10) days allowed, the commissioner may file a notice of tax  
171 lien with the circuit clerk of the county in which the sureties  
172 reside or own property, which shall be enrolled upon the judgment  
173 roll, and the commissioner may proceed to collect from the  
174 sureties as provided in this section for collecting from any  
175 judgment debtor.

176 (c) The commissioner is \* \* \* authorized to pay the  
177 clerk's fee for enrolling certificates of indebtedness and any  
178 court costs that may be adjudged against the department or  
179 commissioner out of funds appropriated by the Legislature to  
180 defray expenses of the Department of Revenue.

181 (2) (a) Persons owning stock of fifty percent (50%) or more  
182 of the total of corporations or fifty percent (50%) interest in  
183 limited liability companies with thirty-five (35) or less owners  
184 also shall be liable for amounts due under this chapter, including  
185 interest and penalties thereon, when the amounts become due and  
186 unpaid to the extent that the amounts accrued while the person  
187 owned the stock or interest.

188 (b) Persons owning stock of ten percent (10%) or more  
189 of the total of corporations or ten percent (10%) or more interest  
190 in limited liability companies with thirty-five (35) or less  
191 owners and exercising responsibilities for fiscal management of  
192 the corporation or limited liability company also shall be liable  
193 for amounts due under this chapter, including interest and  
194 penalties thereon, when the amounts become due and unpaid to the





195 extent that the amounts accrued while the person was exercising  
196 responsibilities for fiscal management.

197 (c) The liability under this subsection is derivative  
198 of the corporation or limited liability company, and the  
199 three-year assessment period provided in Section 27-13-25 will  
200 begin to run after the liability of the corporation or limited  
201 liability company becomes final. A person being assessed under  
202 this subsection may appeal his liability under Section 27-77-5  
203 solely regarding the issue of the ownership interest and  
204 management requirements of this subsection. The commissioner  
205 shall make assessments against and effect collection from persons  
206 liable under this subsection by the same procedures provided for  
207 assessment and collections of taxes levied by this chapter.

208 **SECTION 4.** Section 27-65-55, Mississippi Code of 1972, is  
209 amended as follows:

210 27-65-55. (1) The tax imposed by this chapter shall be a  
211 lien upon the property of any person subject to the provisions  
212 thereof who shall sell out his business or stock of goods, or  
213 shall quit business, and \* \* \* the person shall be required to  
214 make out the return provided for under Section 27-65-33 within ten  
215 (10) days after the date he sold out his business or stock of  
216 goods, or quit business, and pay the tax imposed by this chapter.  
217 The purchaser or transferee in business shall be required to  
218 withhold sufficient of the purchase money to cover the amount of  
219 any taxes, damages and interest due until such time as the former



220 owner shall produce a receipt from the commissioner showing  
221 that \* \* \* the liability has been paid, or a certificate that no  
222 taxes are due. In the event the former owner shall fail to pay  
223 any taxes, damages and interest due the state within the time  
224 allowed, the successor in business shall pay \* \* \* the taxes,  
225 damages and interest to the commissioner upon demand. If the  
226 purchaser or transferee of a business or stock of goods shall fail  
227 to withhold purchase money as provided and the taxes, damages and  
228 interest shall be due and unpaid after the period of ten (10) days  
229 allowed, he shall be personally liable for the payment of taxes,  
230 damages and interest of the former owner, and the property sold or  
231 transferred may be proceeded against by the commissioner in the  
232 hands of the purchaser or transferee as though no sale or transfer  
233 had been made.

234 (2) (a) Persons owning stock of fifty percent (50%) or more  
235 of the total of corporations or fifty percent (50%) interest in  
236 limited liability companies with thirty-five (35) or less owners  
237 also shall be liable sales taxes levied by this chapter upon the  
238 corporation when the taxes become due and unpaid to the extent  
239 that the amounts accrued while the person owned the stock or  
240 interest.

241 (b) Persons owning stock of ten percent (10%) or more  
242 of the total of corporations or ten percent (10%) interest in  
243 limited liability companies with thirty-five (35) or fewer owners  
244 and exercising responsibility for fiscal management, also shall be



245 liable for sales taxes levied by this chapter upon \* \* \* the  
246 corporations when \* \* \* the taxes become due and unpaid to the  
247 extent that \* \* \* the taxes accrued while \* \* \* the person was  
248 exercising responsibility for fiscal management.

249         (c) The liability under this subsection is derivative  
250 of the corporation or limited liability company, and the  
251 thirty-six-month assessment period in Section 27-65-42 will begin  
252 to run after the liability of the corporation or limited liability  
253 company becomes final. A person being assessed under this  
254 subsection may appeal his liability under Section 27-77-5 solely  
255 regarding the issue of the ownership interest and management  
256 requirements of this subsection.

257         (d) The commissioner shall make assessments  
258 against \* \* \* persons liable under this subsection of \* \* \* the  
259 taxes, damages and interest, and effect collection by the same  
260 procedures \* \* \* provided for assessment and collection of all  
261 taxes levied by this chapter.

262         (3) Any person, acting as agent for a dealer who has no  
263 permanent place of business in this state, who sells tangible  
264 personal property in this state, either at auction or as a  
265 transient vendor, shall be liable for collection of sales tax,  
266 where applicable, and payment of the same of this state unless the  
267 vendor principal is authorized to collect the tax and is  
268 registered under Section 27-65-27. Such persons shall maintain  
269 for a period of three (3) years adequate records which shall be



270 available for inspection by the commissioner or his agent and  
271 which shall reveal the true sales tax liability of all parties to  
272 each transaction. Failure to maintain and permit examination  
273 of \* \* \* the records shall render the agent liable for sales tax  
274 accruing from all sales as determined by the commissioner from any  
275 information available. The commissioner shall effect collection  
276 by the same procedures herein provided for assessment and  
277 collection of all taxes levied by this chapter.

278         **SECTION 5.** This act shall take effect and be in force from  
279 and after July 1, 2017.

