

By: Representatives Lamar, Brown (20th)

To: Ways and Means

HOUSE BILL NO. 1139

1 AN ACT TO AMEND SECTION 27-7-309, MISSISSIPPI CODE OF 1972,
 2 TO REMOVE THE PROVISION THAT REQUIRES EMPLOYERS WITH AN AVERAGE
 3 MONTHLY WITHHOLDING TAX LIABILITY OF AT LEAST \$50,000.00 FOR THE
 4 PRECEDING CALENDAR YEAR TO PAY, ON OR BEFORE JUNE 25, AT LEAST 75%
 5 OF THEIR ESTIMATED JUNE WITHHOLDING TAX LIABILITY FOR THE CURRENT
 6 TAXABLE YEAR OR AT LEAST 75% OF THEIR JUNE WITHHOLDING TAX
 7 LIABILITY FOR THE PRECEDING TAXABLE YEAR; TO AMEND SECTION
 8 27-65-33, MISSISSIPPI CODE OF 1972, TO REMOVE THE PROVISION THAT
 9 REQUIRES TAXPAYERS WHO ARE REQUIRED TO COLLECT SALES TAX AND WHO
 10 HAVE AN AVERAGE MONTHLY SALES TAX LIABILITY OF AT LEAST \$50,000.00
 11 FOR THE PRECEDING CALENDAR YEAR TO PAY, ON OR BEFORE JUNE 25, AT
 12 LEAST 75% OF THEIR ESTIMATED JUNE SALES TAX LIABILITY FOR THE
 13 CURRENT CALENDAR YEAR OR AT LEAST 75% OF THEIR JUNE SALES TAX
 14 LIABILITY FOR THE PRECEDING CALENDAR YEAR; TO AMEND SECTION
 15 27-67-17, MISSISSIPPI CODE OF 1972, TO REMOVE THE PROVISION THAT
 16 REQUIRES TAXPAYERS WHO ARE REQUIRED TO COLLECT USE TAX AND WHO
 17 HAVE AN AVERAGE MONTHLY USE TAX LIABILITY OF AT LEAST \$50,000.00
 18 FOR THE PRECEDING CALENDAR YEAR TO PAY, ON OR BEFORE JUNE 25, AT
 19 LEAST 75% OF THEIR ESTIMATED JUNE USE TAX LIABILITY FOR THE
 20 CURRENT CALENDAR YEAR OR AT LEAST 75% OF THEIR JUNE USE TAX
 21 LIABILITY FOR THE PRECEDING CALENDAR YEAR; AND FOR RELATED
 22 PURPOSES.

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

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

26 27-7-309. (1) (a) Except as otherwise provided in this
 27 subsection, every employer required to deduct and withhold from
 28 wages under this article shall, for each calendar quarter, on or



29 before the fifteenth day of the month following the close of such
30 calendar quarter, file a withholding return as prescribed by the
31 commissioner and pay over to the commissioner the full amount
32 required to be deducted and withheld from wages by such employer
33 for the calendar quarter. Provided that the commissioner may, by
34 regulation, provide that every such employer shall, on or before
35 the fifteenth day of each month, pay over to the commissioner or a
36 depository designated by the commissioner, the amount required to
37 be deducted and withheld by such employer for the preceding month,
38 if such amount is One Hundred Dollars (\$100.00) or more. Returns
39 and payments placed in the mail must be postmarked by the due date
40 in order to be timely filed, except when the due date falls on a
41 weekend or holiday, returns and payments placed in the mail must
42 be postmarked by the first working day following the due date in
43 order to be considered timely filed.

44 * * *

45 (* * *b) The commissioner may promulgate rules and
46 regulations to require or permit filing periods of any duration,
47 in lieu of monthly or quarterly filing periods, for any taxpayer
48 or group thereof.

49 (2) Notwithstanding any of the other provisions of this
50 section, all transient employers and all employers engaged in any
51 business which is seasonal shall make return and pay over to the
52 commissioner on a monthly basis, the full amounts required to be
53 deducted and withheld from the wages by such employer for the



54 calendar month. Such returns and payments to the commissioner by
55 such employers shall be made on or before the fifteenth day of the
56 month following the month for which such amounts were deducted and
57 withheld from the wages of his employees. The commissioner shall
58 have the authority to issue reasonable rules and regulations
59 designating or classifying those transient and seasonal employers.

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

65 (4) Every employer who fails to withhold or pay to the
66 commissioner any sums required by this article to be withheld and
67 paid, shall be personally and individually liable therefor, except
68 as provided in Section 27-7-307; and any sum or sums withheld in
69 accordance with the provisions of this article shall be deemed to
70 be held in trust for the State of Mississippi and shall be
71 recorded by the employer in a ledger account so as to clearly
72 indicate the amount of tax withheld and that the amount is the
73 property of the State of Mississippi.

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



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

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

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

88 27-65-33. (1) (a) Except as otherwise provided in this
89 section, the taxes levied by this chapter shall be due and payable
90 on or before the twentieth day of the month next succeeding the
91 month in which the tax accrues, except as otherwise provided.
92 Returns and payments placed in the mail must be postmarked by the
93 due date in order to be considered timely filed, except when the
94 due date falls on a weekend or holiday, returns and payments
95 placed in the mail must be postmarked by the first working day
96 following the due date in order to be considered timely filed.
97 The taxpayer shall make a return showing the gross proceeds of
98 sales or the gross income of the business, and any and all
99 allowable deductions, or exempt sales, and compute the tax due for
100 the period covered.

101 (b) As compensation for collecting sales and use taxes,
102 complying fully with the applicable statutes, filing returns and
103 supplements thereto and paying all taxes by the twentieth of the



104 month following the period covered, the taxpayer may discount and
105 retain two percent (2%) of the liability on each return subject to
106 the following limitations:

107 (i) The compensation or discount shall not apply
108 to taxes levied under the provisions of Sections 27-65-19 and
109 27-65-21, or on charges for ginning cotton under Section 27-65-23.

110 (ii) The compensation or discount shall not apply
111 to taxes collected by a county official or state agency.

112 (iii) The compensation or discount shall not
113 exceed Fifty Dollars (\$50.00) per month, or Six Hundred Dollars
114 (\$600.00) per calendar year, per business location on each state
115 sales tax return, or on each use tax return.

116 (iv) The compensation or discount shall not apply
117 to any wholesale tax, the rate of which is equal to or greater
118 than the tax rate applicable to retail sales of the same property
119 or service. The retailer of such items shall be entitled to the
120 compensation based on the tax computed on retail sales before
121 application of the credit for any tax paid to the wholesaler,
122 jobber or other person.

123 (v) The compensation or discount allowed and taken
124 for any filing period may be reassessed and collected when an
125 audit of a taxpayer's records reveals a tax deficiency for that
126 period.

127 (c) As compensation for collecting any tax imposed
128 under the authority of a local and private law of the State of



129 Mississippi which is collected and paid to the Department of
130 Revenue in the same or similar manner that state sales taxes are
131 collected and paid, complying fully with such applicable law,
132 filing returns and supplements thereto and paying all taxes by the
133 twentieth of the month following the period covered, the taxpayer
134 may discount and retain two percent (2%) of the liability on each
135 return subject to the following limitations:

136 (i) The compensation or discount shall not apply
137 to taxes collected by a county official or state agency.

138 (ii) The compensation or discount shall not exceed
139 Fifty Dollars (\$50.00) per month, or Six Hundred Dollars (\$600.00)
140 per calendar year, per business location on each tax return.

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

145 * * *

146 (* * *2) All returns shall be sworn to by the taxpayer, if
147 made by an individual, or by the president, vice president,
148 secretary or treasurer of a corporation, or authorized agent, if
149 made on behalf of a corporation. If made on behalf of a
150 partnership, joint venture, association, trust, estate, or in any
151 other group or combination acting as a unit, any individual
152 delegated by such firm shall swear to the return on behalf of the



153 taxpayer. The commissioner may prescribe methods by which the
154 taxpayer may swear to his return.

155 (* * *3) The commissioner may promulgate rules and
156 regulations to require or permit filing periods of any duration,
157 in lieu of monthly filing periods, for any taxpayer or group
158 thereof.

159 (* * *4) The commissioner may require the execution and
160 filing by the taxpayer with the commissioner of a good and solvent
161 bond with some surety company authorized to do business in
162 Mississippi as surety thereon in an amount double the aggregate
163 tax liability by such taxpayer for any previous three-month period
164 within the last calendar year or estimated three (3) months' tax
165 liability. The bond is to be conditioned for the prompt payment
166 of such taxes as may be due for each such return.

167 (* * *5) The commissioner, for good cause, may grant such
168 reasonable additional time within which to make any return
169 required under the provisions of this chapter as he may deem
170 proper, but the time for filing any return shall not be extended
171 beyond the twentieth of the month next succeeding the regular due
172 date of the return without the imposition of interest at the rate
173 of one-half of one percent (1/2 of 1%) per month or fractional
174 part of a month from the time the return was due until the tax is
175 paid.

176 (* * *6) For persistent, willful or recurring failure to
177 make any return and pay the tax shown thereby to be due by the



178 time specified, there shall be added to the amount of tax shown to
179 be due ten percent (10%) damages, or interest at the rate of
180 one-half of one percent (1/2 of 1%) per month, or both.

181 (* * *7) Any taxpayer may, upon making application
182 therefor, obtain from the commissioner an extension of time for
183 the payment of taxes due on credit sales until collections thereon
184 have been made. When such extension is granted, the taxpayer
185 shall thereafter include in each monthly or quarterly report all
186 collections made during the preceding month or quarter, and shall
187 pay the taxes due thereon at the time of filing such report. Such
188 permission may be revoked or denied at the discretion of the
189 commissioner when, in his opinion, a total sales basis will best
190 reflect the taxable income or expedite examination of the
191 taxpayer's records.

192 (* * *8) Any taxpayer reporting credit sales before
193 collection thereof has been made may take credit on subsequent
194 returns or reports for bad debts actually charged off, if such
195 amounts charged off have previously been included in taxable gross
196 income or taxable gross proceeds of sales, as the case may be, and
197 the tax paid thereon. However, any amounts subsequently collected
198 on accounts that have been charged off as bad debts shall be
199 included in subsequent reports and the tax shall be paid thereon.

200 (* * *9) In cases where an extension of time has been
201 granted by the commissioner for payment of taxes due on credit
202 sales and the taxpayer thereafter discontinues the business, such



203 taxpayer shall be required to file with the commissioner within
204 ten (10) days, or such further time as the commissioner may
205 direct, from the date of the discontinuance of such business, a
206 special report showing the amounts of any credit sales which have
207 not been included in determining the measure of the tax previously
208 paid and any other information with reference to credit sales as
209 the commissioner may require. The commissioner shall thereupon
210 investigate the facts with reference to credit sales and the
211 condition of the accounts, and shall determine, from the best
212 evidence available, the value of all open accounts, notes or other
213 evidence of debt arising from credit sales. The value of all
214 notes, open accounts and other evidence of debt, as thus
215 determined by the commissioner, shall be used in determining the
216 amount of the tax for which such taxpayer shall be liable. When
217 the amount of the tax shall have been ascertained, the taxpayer
218 shall be required to pay the same within ten (10) days or such
219 further time as the commissioner may allow, notwithstanding the
220 fact that such note or accounts may still remain uncollected.

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

223 27-67-17. (1) Except as otherwise provided in this section,
224 the commissioner shall collect the tax imposed by this article,
225 and every person subject to its provisions shall remit to the
226 commissioner, on or before the twentieth day of each month, the
227 amount of tax due by such person for the preceding calendar month.



228 Returns and payments placed in the mail must be postmarked by the
229 due date in order to be timely filed, except that when the due
230 date falls on a weekend or holiday, returns and payments placed in
231 the mail must be postmarked by the first working day following the
232 due date in order to be considered timely filed. Every taxpayer
233 shall file a return with his remittance, which return shall be
234 prescribed by the commissioner and shall show for the calendar
235 month preceding the tax payment date, the total sale or purchase
236 price, or value of tangible personal property or specified digital
237 products sold, used, stored or consumed by him for benefit
238 received or service performed, and such other information as the
239 commissioner may deem pertinent and necessary for determining the
240 amount of tax due thereunder.

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

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

249 * * *

250 (* * *4) The commissioner, in his discretion, may authorize
251 the computation of the tax on the basis of a formula in lieu of
252 direct accounting of specific properties in instances where such



253 method will expedite, simplify or provide a more equitable means
254 of determining liability under this article. All formulas shall
255 be subject to revocation for good cause by the commissioner.

256 **SECTION 4.** This act shall take effect and be in force from
257 and after July 1, 2021.

