HOUSE BILL NO. 1139

AN ACT TO AMEND SECTION 27-7-309, MISSISSIPPI CODE OF 1972, TO REMOVE THE PROVISION THAT REQUIRES EMPLOYERS WITH AN AVERAGE MONTHLY WITHHOLDING TAX LIABILITY OF AT LEAST $50,000.00 FOR THE PRECEDING CALENDAR YEAR TO PAY, ON OR BEFORE JUNE 25, AT LEAST 75% OF THEIR ESTIMATED JUNE WITHHOLDING TAX LIABILITY FOR THE CURRENT TAXABLE YEAR OR AT LEAST 75% OF THEIR JUNE WITHHOLDING TAX LIABILITY FOR THE PRECEDING TAXABLE YEAR; TO AMEND SECTION 27-65-33, MISSISSIPPI CODE OF 1972, TO REMOVE THE PROVISION THAT REQUIRES TAXPAYERS WHO ARE REQUIRED TO COLLECT SALES TAX AND WHO HAVE AN AVERAGE MONTHLY SALES TAX LIABILITY OF AT LEAST $50,000.00 FOR THE PRECEDING CALENDAR YEAR TO PAY, ON OR BEFORE JUNE 25, AT LEAST 75% OF THEIR ESTIMATED JUNE SALES TAX LIABILITY FOR THE CURRENT CALENDAR YEAR OR AT LEAST 75% OF THEIR JUNE SALES TAX LIABILITY FOR THE PRECEDING CALENDAR YEAR; TO AMEND SECTION 27-67-17, MISSISSIPPI CODE OF 1972, TO REMOVE THE PROVISION THAT REQUIRES TAXPAYERS WHO ARE REQUIRED TO COLLECT USE TAX AND WHO HAVE AN AVERAGE MONTHLY USE TAX LIABILITY OF AT LEAST $50,000.00 FOR THE PRECEDING CALENDAR YEAR TO PAY, ON OR BEFORE JUNE 25, AT LEAST 75% OF THEIR ESTIMATED JUNE USE TAX LIABILITY FOR THE CURRENT CALENDAR YEAR OR AT LEAST 75% OF THEIR JUNE USE TAX LIABILITY FOR THE PRECEDING CALENDAR YEAR; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) As compensation for collecting any tax imposed under the authority of a local and private law of the State of
Mississippi which is collected and paid to the Department of Revenue in the same or similar manner that state sales taxes are collected and paid, complying fully with such applicable law, filing returns and supplements thereto and paying all taxes by the twentieth of the month following the period covered, the taxpayer may discount and retain two percent (2%) of the liability on each return subject to the following limitations:

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

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

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

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

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

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

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

(* * *6) For persistent, willful or recurring failure to
make any return and pay the tax shown thereby to be due by the
time specified, there shall be added to the amount of tax shown to be due ten percent (10%) damages, or interest at the rate of one-half of one percent (1/2 of 1%) per month, or both.

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

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

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

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

27-67-17. (1) Except as otherwise provided in this section, the commissioner shall collect the tax imposed by this article, and every person subject to its provisions shall remit to the commissioner, on or before the twentieth day of each month, the amount of tax due by such person for the preceding calendar month.
Returns and payments placed in the mail must be postmarked by the due date in order to be timely filed, except that when the due date falls on a weekend or holiday, returns and payments placed in the mail must be postmarked by the first working day following the due date in order to be considered timely filed. Every taxpayer shall file a return with his remittance, which return shall be prescribed by the commissioner and shall show for the calendar month preceding the tax payment date, the total sale or purchase price, or value of tangible personal property or specified digital products sold, used, stored or consumed by him for benefit received or service performed, and such other information as the commissioner may deem pertinent and necessary for determining the amount of tax due thereunder.

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

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

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

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