MISSISSIPPI LEGISLATURE

REGULAR SESSION 2021

By: Senator(s) Harkins

To: Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2843

AN ACT TO AMEND SECTION 27-7-309, MISSISSIPPI CODE OF 1972, TO PHASE OUT, BY JULY 1, 2024, THE REQUIREMENT THAT EMPLOYERS WITH AN AVERAGE MONTHLY WITHHOLDING TAX LIABILITY OF AT LEAST $50,000.00 FOR THE PRECEDING CALENDAR YEAR REMIT, 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 PHASE OUT, BY JULY 1, 2024, THE REQUIREMENT THAT TAXPAYERS WITH AN AVERAGE MONTHLY SALES TAX LIABILITY OF AT LEAST $50,000.00 FOR THE PRECEDING CALENDAR YEAR REMIT, ON OR BEFORE JUNE 25, AT LEAST 75% OF THEIR ESTIMATED JUNE SALES TAX LIABILITY FOR THE CURRENT TAXABLE YEAR OR AT LEAST 75% OF THEIR JUNE SALES TAX LIABILITY FOR THE PRECEDING TAXABLE YEAR; TO AMEND SECTION 27-67-17, MISSISSIPPI CODE OF 1972, TO PHASE OUT, BY JULY 1, 2024, THE REQUIREMENT THAT EMPLOYERS WITH AN AVERAGE MONTHLY USE TAX LIABILITY OF AT LEAST $50,000.00 FOR THE PRECEDING CALENDAR YEAR REMIT, ON OR BEFORE JUNE 25, AT LEAST 75% OF THEIR ESTIMATED JUNE USE TAX LIABILITY FOR THE CURRENT TAXABLE YEAR OR AT LEAST 75% OF THEIR JUNE USE TAX LIABILITY FOR THE PRECEDING TAXABLE 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.

(b) An employer having an average monthly withholding
tax liability of at least Fifty Thousand Dollars ($50,000.00) for
the preceding calendar year shall pay to the Department of Revenue
on or before June 25, 2014, and on or before the twenty-fifth day
of June of each succeeding year thereafter through June 30, 2021,
an amount equal to at least seventy-five percent (75%) of such
employer's estimated withholding tax liability for the month of
June of the current taxable year, or an amount equal to at least
seventy-five percent (75%) of the employer's withholding tax
liability for the month of June of the preceding taxable year.
From and after July 1, 2021, through June 30, 2022, the payment required on or before the twenty-fifth day of June shall be equal to at least fifty percent (50%) of such employer's estimated withholding tax liability for the month of June of the current taxable year, or an amount equal to at least fifty percent (50%) of the employer's withholding tax liability for the month of June of the preceding taxable year. From and after July 1, 2022, through June 30, 2023, the payment required on or before the twenty-fifth day of June shall be equal to at least twenty-five percent (25%) of such employer's estimated withholding tax liability for the month of June of the current taxable year, or an amount equal to at least twenty-five percent (25%) of the employer's withholding tax liability for the month of June of the preceding taxable year. From and after July 1, 2024, no payment shall be required on or before the twenty-fifth day of June, but payment for the month of June shall be the same as for the other months of the year.

Payments required to be made before July 1, 2024, under this paragraph must be received by the Department of Revenue no later than June 25 in order to be considered timely made. An employer that fails to comply with the requirements of this paragraph may be assessed a penalty in an amount equal to ten percent (10%) of the difference between any amount the taxpayer pays pursuant to this paragraph and the employer's actual withholding tax liability for the month of June for which the estimated payment was required.
to be made. This paragraph shall not apply to any agency, department or instrumentality of the United States, any agency, department, institution, instrumentality or political subdivision of the State of Mississippi, or any agency, department, institution or instrumentality of any political subdivision of the State of Mississippi. Payments made pursuant to this paragraph for the month of June, less One Hundred Thousand Dollars ($100,000.00) thereof to be retained by the Department of Revenue each year to defray the costs of collection, shall be deposited by the Department of Revenue into the State General Fund.

(c) 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.

(2) A taxpayer required to collect sales taxes under this chapter and having an average monthly sales tax liability of at least Fifty Thousand Dollars ($50,000.00) for the preceding calendar year shall pay to the Department of Revenue on or before June 25, 2014, and on or before the twenty-fifth day of June of each succeeding year thereafter through June 30, 2021, an amount equal to at least seventy-five percent (75%) of such taxpayer's estimated sales tax liability for the month of June of the current calendar year, or an amount equal to at least seventy-five percent (75%) of the taxpayer's sales tax liability for the month of June of the preceding calendar year. From and after July 1, 2021, through June 30, 2022, the payment required on or before the
twenty-fifth day of June shall be equal to at least fifty percent (50%) of such employer's estimated sales tax liability for the month of June of the current taxable year, or an amount equal to at least fifty percent (50%) of the employer's sales tax liability for the month of June of the preceding taxable year. From and after July 1, 2022, through June 30, 2023, the payment required on or before the twenty-fifth day of June shall be equal to at least twenty-five percent (25%) of such employer's estimated sales tax liability for the month of June of the current taxable year, or an amount equal to at least twenty-five percent (25%) of the employer's sales tax liability for the month of June of the preceding taxable year. From and after July 1, 2024, no payment shall be required on or before the twenty-fifth day of June, but payment for the month of June shall be the same as for the other months of the year.

For the purposes of calculating a taxpayer's estimated sales tax liability for the month of June of the current calendar year, the taxpayer does not have to include taxes due on credit sales for which the taxpayer has not received payment before June 20. Payments required to be made before July 1, 2024, under this subsection must be received by the Department of Revenue no later than June 25 in order to be considered timely made. A taxpayer that fails to comply with the requirements of this subsection may be assessed a penalty in an amount equal to ten percent (10%) of the difference between any amount the taxpayer pays pursuant to
this subsection and the taxpayer's actual sales tax liability for
the month of June for which the estimated payment was required to
be made. Payments made by a taxpayer under this subsection shall
not be considered to be collected for the purposes of any sales
tax diversions required by law until the taxpayer files a return
for the actual sales taxes collected during the month of June.
This subsection shall not apply to any agency, department or
instrumentality of the United States, any agency, department,
institution, instrumentality or political subdivision of the State
of Mississippi, or any agency, department, institution or
instrumentality of any political subdivision of the State of
Mississippi.

(3) 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 corporation. 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.

(4) 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.
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.

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.

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.

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.

(9) 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.

(10) 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.

(4) A taxpayer required to collect use taxes under this
article and having an average monthly use tax liability of at
least Fifty Thousand Dollars ($50,000.00) for the preceding
calendar year shall pay to the Department of Revenue on or before
June 25, 2014, and on or before the twenty-fifth day of June of
each succeeding year thereafter through June 30, 2021, an amount
equal to at least seventy-five percent (75%) of such taxpayer's
estimated use tax liability for the month of June of the current
calendar year, or an amount equal to at least seventy-five percent
(75%) of the taxpayer's use tax liability for the month of June of
the preceding calendar year. From and after July 1, 2021, through June 30, 2022, the payment required on or before the twenty-fifth day of June shall be equal to at least fifty percent (50%) of such employer's estimated use tax liability for the month of June of the current taxable year, or an amount equal to at least fifty percent (50%) of the employer's use tax liability for the month of June of the preceding taxable year. From and after July 1, 2022, through June 30, 2023, the payment required on or before the twenty-fifth day of June shall be equal to at least twenty-five percent (25%) of such employer's estimated use tax liability for the month of June of the current taxable year, or an amount equal to at least twenty-five percent (25%) of the employer's use tax liability for the month of June of the preceding taxable year. From and after July 1, 2024, no payment shall be required on or before the twenty-fifth day of June, but payment for the month of June shall be the same as for the other months of the year.

Payments required to be made before July 1, 2024, under this subsection must be received by the Department of Revenue no later than June 25 in order to be considered timely made. A taxpayer that fails to comply with the requirements of this subsection may be assessed a penalty in an amount equal to ten percent (10%) of the difference between any amount the taxpayer pays pursuant to this subsection and the taxpayer's actual use tax liability for the month of June for which the estimated payment was required to be made. Payments made by a taxpayer under this subsection shall
not be considered to be collected for the purposes of any use tax
diversions required by law until the taxpayer files a return for
the actual use taxes collected during the month of June. This
subsection shall not apply to any agency, department or
instrumentality of the United States, any agency, department,
institution, instrumentality or political subdivision of the State
of Mississippi, or any agency, department, institution or
instrumentality of any political subdivision of the State of
Mississippi.

(5) 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, and shall stand repealed on June 30, 2021.