

Senate Amendments to House Bill No. 1139

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

23 **SECTION 1.** Section 27-7-309, Mississippi Code of 1972, is
24 amended as follows:
25 27-7-309. (1) (a) Except as otherwise provided in this
26 subsection, every employer required to deduct and withhold from
27 wages under this article shall, for each calendar quarter, on or
28 before the fifteenth day of the month following the close of such
29 calendar quarter, file a withholding return as prescribed by the
30 commissioner and pay over to the commissioner the full amount
31 required to be deducted and withheld from wages by such employer
32 for the calendar quarter. Provided that the commissioner may, by
33 regulation, provide that every such employer shall, on or before
34 the fifteenth day of each month, pay over to the commissioner or a
35 depository designated by the commissioner, the amount required to
36 be deducted and withheld by such employer for the preceding month,
37 if such amount is One Hundred Dollars (\$100.00) or more. Returns
38 and payments placed in the mail must be postmarked by the due date
39 in order to be timely filed, except when the due date falls on a

40 weekend or holiday, returns and payments placed in the mail must
41 be postmarked by the first working day following the due date in
42 order to be considered timely filed.

43 (b) An employer having an average monthly withholding
44 tax liability of at least Fifty Thousand Dollars (\$50,000.00) for
45 the preceding calendar year shall pay to the Department of Revenue
46 on or before June 25, 2014, and on or before the twenty-fifth day
47 of June of each succeeding year thereafter through June 30, 2021,
48 an amount equal to at least seventy-five percent (75%) of such
49 employer's estimated withholding tax liability for the month of
50 June of the current taxable year, or an amount equal to at least
51 seventy-five percent (75%) of the employer's withholding tax
52 liability for the month of June of the preceding taxable year.
53 From and after July 1, 2021, through June 30, 2022, the payment
54 required on or before the twenty-fifth day of June shall be equal
55 to at least fifty percent (50%) of such employer's estimated
56 withholding tax liability for the month of June of the current
57 taxable year, or an amount equal to at least fifty percent (50%)
58 of the employer's withholding tax liability for the month of June
59 of the preceding taxable year. From and after July 1, 2022,
60 through June 30, 2023, the payment required on or before the
61 twenty-fifth day of June shall be equal to at least twenty-five
62 percent (25%) of such employer's estimated withholding tax
63 liability for the month of June of the current taxable year, or an
64 amount equal to at least twenty-five percent (25%) of the
65 employer's withholding tax liability for the month of June of the

66 preceding taxable year. From and after July 1, 2024, no payment
67 shall be required on or before the twenty-fifth day of June, but
68 payment for the month of June shall be the same as for the other
69 months of the year.

70 Payments required to be made before July 1, 2024, under this
71 paragraph must be received by the Department of Revenue no later
72 than June 25 in order to be considered timely made. An employer
73 that fails to comply with the requirements of this paragraph may
74 be assessed a penalty in an amount equal to ten percent (10%) of
75 the difference between any amount the taxpayer pays pursuant to
76 this paragraph and the employer's actual withholding tax liability
77 for the month of June for which the estimated payment was required
78 to be made. This paragraph shall not apply to any agency,
79 department or instrumentality of the United States, any agency,
80 department, institution, instrumentality or political subdivision
81 of the State of Mississippi, or any agency, department,
82 institution or instrumentality of any political subdivision of the
83 State of Mississippi. Payments made pursuant to this paragraph
84 for the month of June, less One Hundred Thousand Dollars
85 (\$100,000.00) thereof to be retained by the Department of Revenue
86 each year to defray the costs of collection, shall be deposited by
87 the Department of Revenue into the State General Fund.

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

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

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

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

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

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

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

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

131 27-65-33. (1) (a) Except as otherwise provided in this
132 section, the taxes levied by this chapter shall be due and payable
133 on or before the twentieth day of the month next succeeding the
134 month in which the tax accrues, except as otherwise provided.
135 Returns and payments placed in the mail must be postmarked by the
136 due date in order to be considered timely filed, except when the
137 due date falls on a weekend or holiday, returns and payments
138 placed in the mail must be postmarked by the first working day
139 following the due date in order to be considered timely filed.
140 The taxpayer shall make a return showing the gross proceeds of
141 sales or the gross income of the business, and any and all

142 allowable deductions, or exempt sales, and compute the tax due for
143 the period covered.

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

150 (i) The compensation or discount shall not apply
151 to taxes levied under the provisions of Sections 27-65-19 and
152 27-65-21, or on charges for ginning cotton under Section 27-65-23.

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

155 (iii) The compensation or discount shall not
156 exceed Fifty Dollars (\$50.00) per month, or Six Hundred Dollars
157 (\$600.00) per calendar year, per business location on each state
158 sales tax return, or on each use tax return.

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

166 (v) The compensation or discount allowed and taken
167 for any filing period may be reassessed and collected when an

168 audit of a taxpayer's records reveals a tax deficiency for that
169 period.

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

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

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

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

188 (2) A taxpayer required to collect sales taxes under this
189 chapter and having an average monthly sales tax liability of at
190 least Fifty Thousand Dollars (\$50,000.00) for the preceding
191 calendar year shall pay to the Department of Revenue on or before
192 June 25, 2014, and on or before the twenty-fifth day of June of
193 each succeeding year thereafter through June 30, 2021, an amount

194 equal to at least seventy-five percent (75%) of such taxpayer's
195 estimated sales tax liability for the month of June of the current
196 calendar year, or an amount equal to at least seventy-five percent
197 (75%) of the taxpayer's sales tax liability for the month of June
198 of the preceding calendar year. From and after July 1, 2021,
199 through June 30, 2022, the payment required on or before the
200 twenty-fifth day of June shall be equal to at least fifty percent
201 (50%) of such employer's estimated sales tax liability for the
202 month of June of the current taxable year, or an amount equal to
203 at least fifty percent (50%) of the employer's sales tax liability
204 for the month of June of the preceding taxable year. From and
205 after July 1, 2022, through June 30, 2023, the payment required on
206 or before the twenty-fifth day of June shall be equal to at least
207 twenty-five percent (25%) of such employer's estimated sales tax
208 liability for the month of June of the current taxable year, or an
209 amount equal to at least twenty-five percent (25%) of the
210 employer's sales tax liability for the month of June of the
211 preceding taxable year. From and after July 1, 2024, no payment
212 shall be required on or before the twenty-fifth day of June, but
213 payment for the month of June shall be the same as for the other
214 months of the year.

215 For the purposes of calculating a taxpayer's estimated sales
216 tax liability for the month of June of the current calendar year,
217 the taxpayer does not have to include taxes due on credit sales
218 for which the taxpayer has not received payment before June 20.
219 Payments required to be made before July 1, 2024, under this

220 subsection must be received by the Department of Revenue no later
221 than June 25 in order to be considered timely made. A taxpayer
222 that fails to comply with the requirements of this subsection may
223 be assessed a penalty in an amount equal to ten percent (10%) of
224 the difference between any amount the taxpayer pays pursuant to
225 this subsection and the taxpayer's actual sales tax liability for
226 the month of June for which the estimated payment was required to
227 be made. Payments made by a taxpayer under this subsection shall
228 not be considered to be collected for the purposes of any sales
229 tax diversions required by law until the taxpayer files a return
230 for the actual sales taxes collected during the month of June.
231 This subsection shall not apply to any agency, department or
232 instrumentality of the United States, any agency, department,
233 institution, instrumentality or political subdivision of the State
234 of Mississippi, or any agency, department, institution or
235 instrumentality of any political subdivision of the State of
236 Mississippi.

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

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

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

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

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

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

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

290 (10) In cases where an extension of time has been granted by
291 the commissioner for payment of taxes due on credit sales and the
292 taxpayer thereafter discontinues the business, such taxpayer shall
293 be required to file with the commissioner within ten (10) days, or
294 such further time as the commissioner may direct, from the date of
295 the discontinuance of such business, a special report showing the
296 amounts of any credit sales which have not been included in

297 determining the measure of the tax previously paid and any other
298 information with reference to credit sales as the commissioner may
299 require. The commissioner shall thereupon investigate the facts
300 with reference to credit sales and the condition of the accounts,
301 and shall determine, from the best evidence available, the value
302 of all open accounts, notes or other evidence of debt arising from
303 credit sales. The value of all notes, open accounts and other
304 evidence of debt, as thus determined by the commissioner, shall be
305 used in determining the amount of the tax for which such taxpayer
306 shall be liable. When the amount of the tax shall have been
307 ascertained, the taxpayer shall be required to pay the same within
308 ten (10) days or such further time as the commissioner may allow,
309 notwithstanding the fact that such note or accounts may still
310 remain uncollected.

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

313 27-67-17. (1) Except as otherwise provided in this section,
314 the commissioner shall collect the tax imposed by this article,
315 and every person subject to its provisions shall remit to the
316 commissioner, on or before the twentieth day of each month, the
317 amount of tax due by such person for the preceding calendar month.
318 Returns and payments placed in the mail must be postmarked by the
319 due date in order to be timely filed, except that when the due
320 date falls on a weekend or holiday, returns and payments placed in
321 the mail must be postmarked by the first working day following the
322 due date in order to be considered timely filed. Every taxpayer

323 shall file a return with his remittance, which return shall be
324 prescribed by the commissioner and shall show for the calendar
325 month preceding the tax payment date, the total sale or purchase
326 price, or value of tangible personal property or specified digital
327 products sold, used, stored or consumed by him for benefit
328 received or service performed, and such other information as the
329 commissioner may deem pertinent and necessary for determining the
330 amount of tax due thereunder.

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

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

339 (4) A taxpayer required to collect use taxes under this
340 article and having an average monthly use tax liability of at
341 least Fifty Thousand Dollars (\$50,000.00) for the preceding
342 calendar year shall pay to the Department of Revenue on or before
343 June 25, 2014, and on or before the twenty-fifth day of June of
344 each succeeding year thereafter through June 30, 2021, an amount
345 equal to at least seventy-five percent (75%) of such taxpayer's
346 estimated use tax liability for the month of June of the current
347 calendar year, or an amount equal to at least seventy-five percent
348 (75%) of the taxpayer's use tax liability for the month of June of

349 the preceding calendar year. From and after July 1, 2021, through
350 June 30, 2022, the payment required on or before the twenty-fifth
351 day of June shall be equal to at least fifty percent (50%) of such
352 employer's estimated use tax liability for the month of June of
353 the current taxable year, or an amount equal to at least fifty
354 percent (50%) of the employer's use tax liability for the month of
355 June of the preceding taxable year. From and after July 1, 2022,
356 through June 30, 2023, the payment required on or before the
357 twenty-fifth day of June shall be equal to at least twenty-five
358 percent (25%) of such employer's estimated use tax liability for
359 the month of June of the current taxable year, or an amount equal
360 to at least twenty-five percent (25%) of the employer's use tax
361 liability for the month of June of the preceding taxable year.
362 From and after July 1, 2024, no payment shall be required on or
363 before the twenty-fifth day of June, but payment for the month of
364 June shall be the same as for the other months of the year.

365 Payments required to be made before July 1, 2024, under this
366 subsection must be received by the Department of Revenue no later
367 than June 25 in order to be considered timely made. A taxpayer
368 that fails to comply with the requirements of this subsection may
369 be assessed a penalty in an amount equal to ten percent (10%) of
370 the difference between any amount the taxpayer pays pursuant to
371 this subsection and the taxpayer's actual use tax liability for
372 the month of June for which the estimated payment was required to
373 be made. Payments made by a taxpayer under this subsection shall
374 not be considered to be collected for the purposes of any use tax

375 diversions required by law until the taxpayer files a return for
376 the actual use taxes collected during the month of June. This
377 subsection shall not apply to any agency, department or
378 instrumentality of the United States, any agency, department,
379 institution, instrumentality or political subdivision of the State
380 of Mississippi, or any agency, department, institution or
381 instrumentality of any political subdivision of the State of
382 Mississippi.

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

389 **SECTION 4.** This act shall take effect and be in force from
390 and after July 1, 2021, and shall stand repealed on June 30, 2021.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 27-7-309, MISSISSIPPI CODE OF 1972,
2 TO PHASE OUT, BY JULY 1, 2024, THE REQUIREMENT THAT EMPLOYERS WITH
3 AN AVERAGE MONTHLY WITHHOLDING TAX LIABILITY OF AT LEAST
4 \$50,000.00 FOR THE PRECEDING CALENDAR YEAR REMIT, ON OR BEFORE
5 JUNE 25, AT LEAST 75% OF THEIR ESTIMATED JUNE WITHHOLDING TAX
6 LIABILITY FOR THE CURRENT TAXABLE YEAR OR AT LEAST 75% OF THEIR
7 JUNE WITHHOLDING TAX LIABILITY FOR THE PRECEDING TAXABLE YEAR; TO
8 AMEND SECTION 27-65-33, MISSISSIPPI CODE OF 1972, TO PHASE OUT, BY
9 JULY 1, 2024, THE REQUIREMENT THAT TAXPAYERS WITH AN AVERAGE
10 MONTHLY SALES TAX LIABILITY OF AT LEAST \$50,000.00 FOR THE
11 PRECEDING CALENDAR YEAR REMIT, ON OR BEFORE JUNE 25, AT LEAST 75%
12 OF THEIR ESTIMATED JUNE SALES TAX LIABILITY FOR THE CURRENT
13 TAXABLE YEAR OR AT LEAST 75% OF THEIR JUNE SALES TAX LIABILITY FOR
14 THE PRECEDING TAXABLE YEAR; TO AMEND SECTION 27-67-17, MISSISSIPPI

15 CODE OF 1972, TO PHASE OUT, BY JULY 1, 2024, THE REQUIREMENT THAT
16 EMPLOYERS WITH AN AVERAGE MONTHLY USE TAX LIABILITY OF AT LEAST
17 \$50,000.00 FOR THE PRECEDING CALENDAR YEAR REMIT, ON OR BEFORE
18 JUNE 25, AT LEAST 75% OF THEIR ESTIMATED JUNE USE TAX LIABILITY
19 FOR THE CURRENT TAXABLE YEAR OR AT LEAST 75% OF THEIR JUNE USE TAX
20 LIABILITY FOR THE PRECEDING TAXABLE YEAR; AND FOR RELATED
21 PURPOSES.

SS26\HB1139A.J

Eugene S. Clarke
Secretary of the Senate