

By: Representative Watson

To: Ways and Means

HOUSE BILL NO. 1255

1 AN ACT TO AUTHORIZE THE STATE TAX COMMISSION TO CLOSE THE
2 BUSINESS OF ANY TAXPAYER WHO HAS FAILED TO FILE THREE SALES OR USE
3 TAX RETURNS AND PAYMENTS DURING ANY CONSECUTIVE TWENTY-FOUR-MONTH
4 PERIOD; TO PROVIDE FOR NOTICE OF THE CLOSURE; TO PROVIDE THE
5 METHODS BY WHICH THE TAXPAYER MAY AVOID THE CLOSURE OF THE
6 BUSINESS; TO PROVIDE FOR APPEALS OF THE CLOSURE TO A HEARING
7 OFFICER APPOINTED BY THE CHAIRMAN OF THE STATE TAX COMMISSION; TO
8 PROVIDE THE PROCEDURES TO BE UTILIZED BY THE HEARING OFFICER IN
9 CONDUCTING A HEARING; TO PROVIDE FOR JUDICIAL REVIEW OF THE
10 DECISIONS OF THE HEARING OFFICER; TO PROVIDE THE PROCEDURE FOR THE
11 CLOSURE OF A BUSINESS; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** As used in this act:

14 (a) "Commissioner" means the Chairman of the State Tax
15 Commission.

16 (b) "Noncompliant taxpayer" means any taxpayer who has
17 failed to file two (2) sales or use tax returns and payments
18 during any consecutive twenty-four-month period.

19 **SECTION 2.** (1) In addition to all other remedies provided
20 by law for the collection of unpaid sales and use taxes, the
21 commissioner shall have the authority to close the business of a
22 noncompliant taxpayer subject to the appeal procedures authorized
23 by this act, if the noncompliant taxpayer, for three (3) times
24 within any consecutive twenty-four-month period, fails to file a
25 sales or use tax return and payment.

26 (2) The commissioner shall give notice to the noncompliant
27 taxpayer that the third failure to file a sales or use tax return
28 and payment within any consecutive twenty-four-month period shall
29 result in the closure of his business. The notice shall be in
30 writing and shall be delivered to the noncompliant taxpayer by
31 regular mail or by hand delivery.

32 (3) If the noncompliant taxpayer has a third delinquency in
33 filing a sales or use tax return or payment within any consecutive
34 twenty-four-month period after the issuance of the notice provided
35 for in subsection (1) of this section, the commissioner shall
36 notify the noncompliant taxpayer by certified mail or by hand
37 delivery, that the business of the noncompliant taxpayer will be
38 closed within five (5) business days from the date of the notice
39 unless the noncompliant taxpayer makes arrangements with the
40 commissioner to pay the taxes due or appeals as provided for in
41 this act. If the fifth day falls on a Saturday, Sunday or a legal
42 holiday the business may be closed on the next succeeding business
43 day.

44 (4) A noncompliant taxpayer may avoid closure of the
45 business by:

46 (a) Filing all delinquent returns and paying all taxes
47 due, including any interest and penalties; or

48 (b) Entering into a payment agreement approved by the
49 commissioner to satisfy the delinquency.

50 **SECTION 3.** (1) A noncompliant taxpayer may request an
51 administrative hearing concerning the decision of the commissioner
52 to close the business of the noncompliant taxpayer by following
53 the procedures in this section.

54 (2) Within five (5) business days after the delivery or
55 attempted delivery of the notice required by Section 2(3) of this
56 act, the taxpayer may file a written protest, signed by the
57 taxpayer or his authorized agent stating the reasons for opposing
58 the closure of the business and requesting an administrative
59 hearing.

60 (3) (a) A noncompliant taxpayer may request that an
61 administrative hearing be held in person, by telephone, upon
62 written documents furnished by the taxpayer or upon written
63 documents and any evidence produced by the taxpayer at an
64 administrative hearing.

65 (b) The commissioner shall have the discretion to
66 determine whether an administrative hearing where testimony is to
67 be presented will be conducted in person or by telephone.

68 (c) A noncompliant taxpayer who requests an
69 administrative hearing based entirely upon written documents is
70 not entitled to any other administrative hearing prior to the
71 hearing officer rendering an opinion.

72 (4) The administrative hearing shall be conducted by a
73 hearing officer who shall be a qualified employee of the State Tax
74 Commissioner appointed by the commissioner.

75 (5) (a) The hearing officer shall set the time and place
76 for a hearing and shall give the noncompliant taxpayer notice of
77 the hearing.

78 (b) At the administrative hearing, the noncompliant
79 taxpayer may be represented by an authorized representative and
80 may present evidence in support of his position.

81 (6) The administrative hearing shall be held at a location
82 selected by the hearing officer and the hearing shall be held
83 within fourteen (14) calendar days of receipt by the commissioner
84 of the request for an administrative hearing.

85 (7) The defenses to the closure of a business under this act
86 are as follows:

87 (a) Written proof that the noncompliant taxpayer filed
88 all delinquent returns and tax payments including interest and
89 penalties; or

90 (b) The noncompliant taxpayer has entered into a
91 written payment agreement, approved by the commissioner, to
92 satisfy the delinquency.

93 (8) The decision of the hearing officer shall be in writing
94 and copies shall be delivered to the taxpayer and the commissioner
95 by mail or by hand delivery.

96 **SECTION 4.** (1) If the decision of the hearing officer is to
97 affirm the closure of the business, the noncompliant taxpayer may

98 seek judicial review of the decision by filing suit within twenty
99 (20) days after the date of the decision.

100 (2) Appeal from a decision by a hearing officer shall be the
101 Circuit Court of the First Judicial District of Hinds County or to
102 the circuit court of the county in which the noncompliant taxpayer
103 resides or has his principal place of business. The trial at the
104 circuit court shall be de novo.

105 (3) (a) If the circuit court finds that the business
106 closure determination by the hearing officer was appropriate, the
107 court shall issue an injunction against the noncompliant taxpayer
108 prohibiting the further operation of the business.

109 (b) If a business subject to an injunction issued by a
110 circuit court under this subsection continues in operation, any
111 person responsible for the decision to operate the business after
112 the issuance of the injunction shall, in addition to any other
113 penalty, be guilty of a misdemeanor.

114 (4) An appeal from the decision of the circuit court may be
115 made as otherwise provided by law.

116 (5) The procedures provided for in this section shall be the
117 only methods for seeking relief from a written decision by a
118 hearing officer to close the business of a noncompliant taxpayer.

119 (6) The decision to close the business of a noncompliant
120 taxpayer shall be final:

121 (a) If the noncompliant taxpayer fails to request an
122 administrative hearing;

123 (b) If the noncompliant taxpayer fails to seek judicial
124 relief from the decision of the hearing officer; or

125 (c) upon a final decision of a circuit court or an
126 appellate court.

127 (7) It is unlawful for a business to continue in operation
128 after a business closure order is issued that is:

129 (a) Upheld on appeal; or

130 (b) Not appealed by the delinquent taxpayer.

131 **SECTION 5.** (1) If a noncompliant taxpayer fails to timely
132 seek administrative or judicial review of a business closure
133 decision, or if the business closure decision is affirmed after
134 administrative or judicial review, the commissioner shall cause a
135 written notice to be affixed to all entrances of the business
136 that:

137 (a) Identifies the business as being subject to a
138 business closure order; and

139 (b) States that the business is prohibited from further
140 operation.

141 (2) In addition, the commissioner may cause the business to
142 be locked or otherwise secure the business so that it may not be
143 operated. If the business is located in the noncompliant
144 taxpayer's home, the business shall not be locked or otherwise
145 secured, but the notice provided for under subsection (1) of this
146 section may be posted.

147 (3) The commissioner may request the assistance of any state
148 or local law enforcement official to post the notice or to secure
149 the business as authorized in this section.

150 **SECTION 6.** The State Tax Commission shall promulgate rules
151 and regulations necessary to implement the provisions of this act.

152 **SECTION 7.** This act shall take effect and be in force from
153 and after July 1, 2005.