Chapter No. 547
12/SS02/R1168SG
JN ITB/EC

SENATE BILL NO. 2899

Originated in Senate Liz Welch Secretary

SENATE BILL NO. 2899

AN ACT TO DIRECT THE STATE FISCAL OFFICER TO TRANSFER CERTAIN AMOUNTS TO THE BUDGET CONTINGENCY FUND FROM THE STATE GENERAL FUND AND CERTAIN SPECIAL FUNDS DURING FISCAL YEARS 2012 AND 2013; TO AMEND SECTION 43-13-407, MISSISSIPPI CODE OF 1972, TO TRANSFER A CERTAIN AMOUNT OF DOLLARS FROM THE HEALTH CARE TRUST FUND TO THE HEALTH CARE EXPENDABLE FUND IN FISCAL YEAR 2013; TO AMEND SECTIONS 27-7-309, 27-65-33 AND 27-67-17, MISSISSIPPI CODE OF 1972, WHICH REQUIRE THE EARLY PAYMENT OF WITHHOLDING, SALES AND USE TAX LIABILITY BY CERTAIN TAXPAYERS AND TO DELAY UNTIL 2013 THE IMPLEMENTATION OF THE INCREASE IN THE AMOUNT OF THE AVERAGE MONTHLY LIABILITY THAT TRIGGERS THE REQUIREMENT FOR EARLY PAYMENT; TO ALLOW THE MISSISSIPPI EMERGENCY MANAGEMENT AGENCY THE OPTION OF USING THE WORKING CASH-STABILIZATION RESERVE FUNDS AND/OR THE BUDGET CONTINGENCY FUND FOR DISASTER ASSISTANCE; TO REPEAL SECTION 4, CHAPTER 126, LAWS OF 2009 SECOND EXTRAORDINARY SESSION, WHICH REQUIRES THE STATE OF MISSISSIPPI TO REPAY A CERTAIN AMOUNT OF FUNDS TO THE MISSISSIPPI DEPARTMENT OF TRANSPORTATION; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) During fiscal year 2012, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, the amount listed below from the following fund:

AGENCY/FUND	FUND NO.	AMOUNT
State General Fund	2999	$183,726,491.00

(2) During fiscal year 2013, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, out of the following enumerated funds, the amounts listed below from each fund:

AGENCY/FUND	FUND NO.	AMOUNT
State General Fund	2999	$ 49,622,038.00
Hurricane Disaster Reserve Fund	3755	26,611,710.00
Department of Finance and Admin.		

Disaster Recovery Fund	3996	785,244.00
Treasurer's Office-Unclaimed Prop.	3178	3,000,000.00
Capital Post-Conviction Counsel	3098	1,037,267.00
Department of Insurance	3501	6,000,000.00
Public Service Commission - Public Utilities	3812	536,872.00
IHL State Court Education Fund	3257	1,500,000.00
Working Cash-Stabilization Reserve Fund	3992	99,562,168.00
TOTAL		$188,655,299.00

(3) During Fiscal Year 2013, the State Fiscal Officer shall transfer Four Hundred Thousand Dollars ($400,000.00) from the Budget Contingency Fund to the Law Enforcement Officers and Fire Fighters Death Benefits Fund (Fund No. 371G).

The Department of Public Safety shall have authority to receive, budget and expend the Four Hundred Thousand Dollars ($400,000.00) transferred to Fund No. 371G in this section. This escalation shall be done in accordance with the rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

(4) During Fiscal Year 2013, the State Fiscal Officer shall transfer Two Million Dollars ($2,000,000.00) from the Department of Finance and Administration Air Transport Fund (Fund No. 3135) to the Capital Expense Fund (Fund No. 399C).

(5) During Fiscal Year 2013, the State Fiscal Officer shall transfer Thirty-three Thousand Four Hundred Twenty-two Dollars ($33,422.00) from the Capital Post-Conviction Counsel Fund (Fund No. 3098) to the Judicial Performance Fund (Fund No. 3095). If House Bill No. 878, Regular Legislative Session of 2012, is enacted increasing Fiscal Year 2013 fees for the Judicial Performance Commission above the Fiscal Year 2012 level, the State Fiscal Officer shall not make the above-mentioned transfer from

the Capital Post-Conviction Counsel Fund to the Judicial Performance Fund.

(6) During Fiscal Year 2012, the State Fiscal Officer shall transfer Two Million Five Hundred Thousand Dollars ($2,500,000.00) from the MMEIA-Tax Incentive Fund (Fund No. 34TT) to the Budget Contingency Fund (Fund No. 3177).

(7) During Fiscal Year 2013, the State Fiscal Officer shall transfer Ten Million Ninety-seven Thousand Four Hundred Forty-three Dollars ($10,097,443.00) from the Capital Expense Fund (Fund No. 399C) to the Budget Contingency Fund (Fund No. 3177).

(8) During Fiscal Year 2013, the State Fiscal Officer shall transfer Three Million Dollars ($3,000,000.00) from the Budget Contingency Fund (Fund No. 3177) to the Mississippi Development Authority.

The Mississippi Development Authority shall have authority to receive, budget and expend Three Million Dollars ($3,000,000.00) of Budget Contingency Funds transferred in this section. This escalation shall be done in accordance with the rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

SECTION 2. Section 43-13-407, Mississippi Code of 1972, is amended as follows:

43-13-407. (1) In accordance with the purposes of this article, there is established in the State Treasury the Health Care Expendable Fund, into which shall be transferred from the Health Care Trust Fund the following sums:

(a) In fiscal year 2005, Four Hundred Fifty-six Million Dollars ($456,000,000.00);

(b) In fiscal year 2006, One Hundred Eighty-six Million Dollars ($186,000,000.00);

(c) In fiscal year 2007, One Hundred Eighty-six Million Dollars ($186,000,000.00);

(d) In fiscal year 2008, One Hundred Six Million Dollars ($106,000,000.00);

(e) In fiscal year 2009, Ninety-two Million Two Hundred Fifty Thousand Dollars ($92,250,000.00);

(f) In the fiscal year beginning after the calendar year in which none of the amount of the annual tobacco settlement installment payment will be deposited into the Health Care Expendable Fund as provided in subsection (3)(d) of this section, and in each fiscal year thereafter, a sum equal to the average annual amount of the dividends, interest and other income, including increases in value of the principal, earned on the funds in the Health Care Trust Fund during the preceding four (4) fiscal years.

(2) In any fiscal year in which interest, dividends and other income from the investment of the funds in the Health Care Trust Fund are not sufficient to fund the full amount of the annual transfer into the Health Care Expendable Fund as required in subsection (1)(f) of this section, the State Treasurer shall transfer from tobacco settlement installment payments an amount that is sufficient to fully fund the amount of the annual transfer.

(3) Beginning with calendar year 2009, at the time that the State of Mississippi receives the tobacco settlement installment payment for each calendar year, the State Treasurer shall deposit the following amounts of each of those installment payments into the Health Care Expendable Fund:

(a) In calendar years 2009 and 2010, the total amount of the installment payment;

(b) In calendar year 2011, the amount of the installment payment less Ten Million Dollars ($10,000,000.00);

(c) In calendar year 2012, the total amount of the installment payment;

(d) In calendar year 2013, and each calendar year thereafter, the amount of the installment payment to be deposited into the Health Care Expendable Fund shall be reduced by an additional Ten Million Dollars ($10,000,000.00) each calendar year until the calendar year that the amount of the installment payment that otherwise would be deposited into the Health Care Expendable Fund is less than the average annual amount of the dividends, interest and other income, including increases in value of the principal, earned on the funds in the Health Care Trust Fund during the preceding four (4) fiscal years. Beginning with that calendar year and each calendar year thereafter, none of the amount of the installment payment shall be deposited into the Health Care Expendable Fund.

(4) (a) In addition to any other sums required to be transferred from the Health Care Trust Fund to the Health Care Expendable Fund, the sum of One Hundred Twelve Million Dollars ($112,000,000.00) shall be transferred from the Health Care Trust Fund to the Health Care Expendable Fund in fiscal year 2011.

(b) In addition to any other sums required to be transferred from the Health Care Trust Fund to the Health Care Expendable Fund, the sum of Fifty-six Million Two Hundred Sixty-three Thousand Four Hundred Thirty-eight Dollars ($56,263,438.00) shall be transferred from the Health Care Trust Fund to the Health Care Expendable Fund during fiscal year 2012.

(c) In addition to any other sums required to be transferred from the Health Care Trust Fund to the Health Care Expendable Fund, the sum of Ninety-seven Million Four Hundred Fifty Thousand Three Hundred Thirty-two Dollars ($97,450,332.00) shall be transferred from the Health Care Trust fund to the Health Care Expendable Fund during fiscal year 2013.

(5) If Medicaid expenditures are projected to exceed the amount of funds appropriated to the Division of Medicaid in any fiscal year in excess of the expenditure reductions to providers,

funds shall be transferred by the State Fiscal Officer from the Health Care Trust Fund into the Health Care Expendable Fund and then to the Governor's Office, Division of Medicaid, in the amount and at such time as requested by the Governor to reconcile the deficit.

(6) All income from the investment of the funds in the Health Care Expendable Fund shall be credited to the account of the Health Care Expendable Fund. Any funds in the Health Care Expendable Fund at the end of a fiscal year shall not lapse into the State General Fund.

(7) The funds in the Health Care Expendable Fund shall be available for expenditure under specific appropriation by the Legislature beginning in fiscal year 2000, and shall be expended exclusively for health care purposes.

(8) The provisions of subsection (1) of this section may not be changed in any manner except upon amendment to that subsection by a bill enacted by the Legislature with a vote of not less than three-fifths (3/5) of the members of each house present and voting.

(9) If the State Treasurer, in consultation with the Executive Director of the Department of Finance and Administration, determines that there is a need to borrow funds to offset any temporary cash flow deficiencies in the Health Care Expendable Fund created in this section, the Treasurer may borrow those funds from any state-source special funds in the State Treasury in amounts that can be repaid from the Health Care Expendable Fund during the fiscal year in which the funds are borrowed. The State Treasurer shall immediately notify the Legislative Budget Office and the Department of Finance and Administration of each transfer into and out of the Health Care Expendable Fund.

(10) No later than September 30, 2011, the State Treasurer shall transfer from the Health Care Expendable Fund to the Health

Care Trust Fund an amount equivalent to the unencumbered ending cash balance of the Health Care Expendable Fund as of June 30, 2011, less Three Million Eight Hundred Forty Thousand Dollars ($3,840,000.00).

(11) Subsections (1), (2), (5), (6) and (7) of this section shall stand repealed on July 1, 2013.

SECTION 3. Section 27-7-309, Mississippi Code of 1972, is amended as follows:

[Until July 1, 2013, this section shall read 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 Twenty Thousand Dollars ($20,000.00) for the preceding calendar year shall pay to the Department of Revenue on or before June 25, 2003, and on or before the twenty-fifth day of June of each succeeding year thereafter, 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. Payments required to be made 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 2003, less One Hundred Thousand Dollars ($100,000.00) thereof to be retained by the Department of Revenue to defray the costs of collection, shall be deposited by the Department of Revenue into the Budget Contingency Fund created under Section 27-103-301, and payments made pursuant to this paragraph for the month of June * * * 2004, and each succeeding year thereafter, 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.

[From and after July 1, 2013, this section shall read 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, 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. Payments required to be made 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 4. Section 27-65-33, Mississippi Code of 1972, is amended as follows:

[Until July 1, 2013, this section shall read as follows:]

27-65-33. (1) 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.

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:

(a) 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.

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

(c) 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.

(d) 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.

(e) 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 Twenty Thousand Dollars ($20,000.00) for the preceding calendar year shall pay to the Department of Revenue on or before June 25, 2003, and on or before the twenty-fifth day of June of each succeeding year thereafter, 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. Payments required to be made 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. Payments made pursuant to this subsection for the month of June 2003, shall be deposited by the Department of Revenue into the Budget Contingency Fund created under Section

27-103-301, and payments made pursuant to this subsection for the month of June * * * 2004, and each succeeding year thereafter, shall be deposited by the Department of Revenue into the State General Fund.

(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.

(5) 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 (3) months' 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.

(6) 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 percent (1%) per month or fractional part of a month from the time the return was due until the tax is paid.

(7) 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 percent (1%) per month, or both.

(8) 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.

[From and after July 1, 2013, this section shall read as follows:]

27-65-33. (1) 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.

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:

(a) 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.

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

(c) 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.

(d) 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.

(e) 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, 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. 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 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.

(5) 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.

(6) 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 percent (1%) per month or fractional part of a month from the time the return was due until the tax is paid.

(7) 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 percent (1%) per month, or both.

(8) 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 5. Section 27-67-17, Mississippi Code of 1972, is amended as follows:

[Until July 1, 2013, this section shall read 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 Twenty Thousand Dollars ($20,000.00) for the preceding calendar year shall pay to the Department of Revenue on or before June 25, 2003, and on or before the twenty-fifth day of June of each succeeding year thereafter, 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. Payments required to be made 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.

[From and after July 1, 2013, this section shall read 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, 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. Payments required to be made 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 6. It is the intention of the Legislature that whenever the Director of the Mississippi Emergency Management Agency determines that funds are immediately needed in the Disaster Assistance Trust Fund to provide for disaster assistance under this section, he shall notify the Executive Director of the Department of Finance and Administration of his determination and shall requisition the amount of funds from the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) that are needed in the trust fund, which shall be subject to the limitations set forth below in this section. At the same time he makes the requisition, the director shall notify the Lieutenant Governor, the Speaker of the House of Representatives and the respective Chairmen of the Senate Appropriations Committee, the Senate Finance Committee, the House Appropriations Committee and the House Ways and Means Committee of

his determination of the need for the funds and the amount that he has requisitioned. Upon receipt of such a requisition from the director, the Executive Director of the Department of Finance and Administration shall ascertain if the amount requisitioned is available in the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) and is within the limitations set forth below in this section and, if it is, he shall transfer that amount from the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) to the trust fund. If the amount requisitioned is more than the amount available in the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) or above the limitations set forth below in this section, the executive director shall transfer the amount that is available within the limitations. The maximum amount that may be transferred from the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) to the trust fund for any one (1) disaster occurrence shall be Five Hundred Thousand Dollars ($500,000.00) and the maximum amount that may be transferred during any fiscal year shall be One Million Dollars ($1,000,000.00).

It is the intention of the Legislature, that during the subsequent legislative session, consideration shall be given to provide an appropriation equal to the amount transferred from the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund (Fund No. 3177) to the Disaster Assistance Trust Fund under the provisions of this section as repayment to the Working Cash-Stabilization Reserve Fund (Fund No. 3992) and/or the Budget Contingency Fund.

SECTION 7. Section 4, Chapter 126, Laws of 2009 Second Extraordinary Session, which requires the State of Mississippi to repay a certain amount of funds to the Mississippi Department of Transportation, is repealed.

SECTION 8. This act shall take effect and be in force from and after July 1, 2012, except for Section 1(1) and (6) which shall take effect and be in force from and after the passage of this act.

PASSED BY THE SENATE
May 1, 2012

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
May 1, 2012

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

GOVERNOR

3:39 pm

5-22-12