NOTICE OF RULE ADOPTION—FINAL RULE

STATE OF MISSISSIPPI
Mississippi State Tax Commission
Office of Audit and Compliance

Mississippi State Tax Commission
Commission Secretary
c/o Sam Polk, Esq.
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Specific Legal Authority Authorizing the promulgation of Rule: HB 1387, 2006 Legislative Session, amended Section 27-3-33, Mississippi Code of 1972

Reference to Rules repealed, amended or suspended by the Proposed Rule: Title 35, Part I, Chapter 05

Date Rule Proposed: August 15, 2006

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule: This rule is being amended because HB 1387 of the 2006 Legislative Session amends Section 27-3-33, Mississippi Code of 1972. The new language added will allow the Mississippi State Tax Commission to establish less formal methods for employers to respond to warrants (garnishments) issued against them for their employees.

The Agency Rule Making Record for this rule including any written comments received during the comment period and the record of any oral proceeding is available for public inspection by contacting the Agency at the above address.

☒ An oral proceeding was held on this rule:

Date: September 25, 2006
Time: 10:00 AM
Place: Mississippi Library Commission

☐ An oral proceeding was not held on this rule.

The Agency has considered the written comments and the presentations made in any oral proceedings, and

☒ This rule as adopted is without variance from the proposed rule.

☐ This rule as adopted differs from the proposed rule as there are minor editorial changes which affect the form rather than the substance of the rule.

☐ The rule as adopted differs from the proposed rule. The differences however are:
Within the scope of the matters in the Notice of Proposed Rule Adoption, the logical outgrowth of the contents of the Notice of Proposed Rule Adoption and the comments submitted in response thereto, and
The Notice of Proposed Rule Adoption provided fair warning that the outcome of the proposed rule adoption could be the rule in question.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Effective Date of Rule: January 1, 2007

Samuel T. Polk III

Sam T. Polk, III, Esquire, Commission Secretary

Nov. 17, 2006

Title 35 MSTC

Part I Administrative

Chapter 05 Collection Procedures for Levy of Monies

100 Purpose

This regulation is promulgated to established a uniform method and procedure for the administration of Distress Warrants For The Levy Of Monies Owed To Taxpayer(s) issued by the Chairman and Commissioner of Revenue and it is intended to apply to all such Distress Warrants issued by the Chairman and Commissioner of Revenue regardless of the type of tax involved in the Distress Warrant. This regulation is promulgated to supplement all other rules and regulations adopted by the Mississippi State Tax Commission and/or the Chairman and Commissioner of Revenue for the various taxes for which a Distress Warrant for the Levy Of Monies Owed To Taxpayer(s) can be issued.

101 Distress Warrant For The Levy Of Monies Owed To Taxpayer(s)

Pursuant to Miss. Code Ann. S27-3-33 (4), as amended, warrants issued by the Chairman and Commissioner of Revenue of the Mississippi State Tax Commission for the collection of taxes shall be used to levy on salaries, compensation or other monies due the delinquent taxpayer. Such warrants for the levy of monies will be issued in the same manner as any warrant for the collection of taxes is issued by the Chairman and Commissioner of Revenue of the Mississippi State Tax Commission. It shall be issued under the official seal of The Mississippi State Tax Commission, and only after a tax lien has been enrolled on the judgment roll of the county wherein the taxpayer resides or the monies are to be levied. After issuance, the warrant shall be served by mail or by hand delivery of said warrant by an agent of the Mississippi State Tax Commission to the person or entity named therein as garnishee. The agent shall execute a Proof of Service indicating on what date and upon whom the warrant was served. This Proof of Service is to be sent by the agent to the Mississippi State Tax Commission where it is to be retained as a part of the file on said warrant.

102 Answer Of The Person Or Entity Served With Distress Warrant For The Levy Of Monies Owed To Taxpayer(s)

Within thirty (30) days from the date of service of the Distress Warrant For The Levy Of Monies Owed To Taxpayer(s), the person or entity served shall file with the Mississippi State Tax Commission an Answer to said distress warrant for the levy of monies wherein the person or entity answers, in writing and under oath, the questions set forth on said Distress Warrant For The Levy Of Monies Owed To Taxpayer(s). This answer may be submitted by one of the methods described below.

1. Submit by mail or facsimile to the Levy Section of the Mississippi State Tax Commission the prepared form entitled Answer to Distress Warrant for the Levy of Monies Owed to Taxpayer(s).
2. Submit by electronic mail (e-mail) to the Levy Section of the Mississippi State Tax

Commission the completed Levy Response form. Prior to using this method of answering the Distress Warrant for the Levy of Monies to Taxpayer(s), the Levy Response Agreement Request must be submitted and approved.

a. For entities who receive twenty five (25) or more levies in a delivery, a document containing the levy information will be e-mailed to the entity to be completed and returned by e-mail to the Levy Section of the Mississippi State Tax Commission.
b. For entities who receive less that twenty five (25) levies in a delivery, single answer e-mails should be submitted to the Levy Section of the Mississippi State Tax Commission.

103 Responsibility Of Persons Or Entity Served To Withhold And Remit Monies Levied By Distress Warrant.

It is the responsibility of the person or entity served with a Distress Warrant For The Levy Of Monies Owed to Taxpayer(s) to remit to the Mississippi State Tax Commission monies levied by the Distress Warrant. The extent to which monies are levied by the Distress Warrant are governed by garnishment laws of this State and will vary depending on the type of indebtedness for which said monies are owed to the taxpayer(s) and the existence of a prior warrant or garnishment. The extent to which monies are levied and required to be remitted under a Distress Warrant is as follows:

1. Wages, Salary And Other Employment Compensation

   A Distress Warrant For The Levy Of Monies Owed To Taxpayer(s) being issued by the Chairman and Commissioner of Revenue for the Mississippi State Tax Commission for the collection of state taxes is excepted from the restrictions contained in Miss. Code Ann. S85-3-4 (1) and (2), as amended, and 15 U.S.C. S1673 (a), as amended, on attachment, execution, or garnishment of wages, salaries or other employment compensation. Without these restrictions, the entire disposable earnings of a taxpayer are subject to being levied. Recognizing the hardship that would result if a person's entire disposable earnings are levied for an extended period of time, it is hereby determined that in most cases the amount of wages, salaries or other employment compensation owed to a delinquent taxpayer which is to be levied and withheld under a Distress Warrant should be less than the entire disposable earnings, and unless otherwise determined and directed as authorized under subdivision (2) below, the amount of wages, salary or other employment compensation owed to a delinquent taxpayer which is to be levied by Distress Warranty For The Levy Of Monies Owed To Taxpayer(s) is hereby limited to the following:

   a. Wages, Salary Or Other Employment Compensation Owed During First Thirty Days After Service.

      Monies owed to the defaulting taxpayer(s) for wages, salaries or other employment purposes are not bound by the Distress Warrant for the first thirty (30) days after service of the Distress Warrant, and such monies which become due to the defaulting taxpayer before or during this initial thirty (30) day period for wages, salary or other employment compensation are to be paid over to the defaulting taxpayer(s).
   b. Wages, Salary Or Other Employment Compensation Owed After Initial Thirty Days Period.

For all monies for indebtedness for wages, salary or other employment compensation which becomes due to the defaulting taxpayer(s) after the initial thirty (30) day period, the employer shall withhold twenty-five percent (25%) of the defaulting taxpayer(s)' disposable earnings per pay period until the Distress Warrant For The Levy of Monies Owed To Taxpayer(s) is satisfied. Disposable earnings is that part of the earnings of an individual remaining after the deduction from those earnings of any amounts required to be withheld by law.

c. Wages, Salary Or Other Employment Compensation Owed For The Final Pay Period Where Employment Is Terminated
If the defaulting taxpayer leaves the employment of the person or entity served with a Distress Warrant For The Levy Of Monies Owed To Taxpayer(s) after the initial thirty (30) day period from service of the warrant, the employer shall withhold one hundred percent (100%) of the defaulting taxpayer(s) final disposable earnings or such lesser amount that will satisfy the warrant.

2. Reservation Of Authority To Increase Or Decrease The Amount Of Wages, Salary Or Other Employment Compensation Levied By Distress Warrant
The authority to increase or decrease the amount or percentage of wages, salary and other employment compensation levied under a Distress Warrant For The Levy Of Monies Owed To Taxpayer(s) from that set out in subsection (1) above is hereby reserved by the Chairman and Commissioner of Revenue. In such cases where a different amount or percentage of disposable earnings from that set out in subsection (1) above is determined to be levied and withheld under a distress warrant, the Distress Warrant for the Levy Of Monies Owed To Taxpayer(s) issued to levy such wages, salary and other employment compensation in a different amount or percentage from that set out in subsection (1) above shall clearly set out the amount or percentage of disposable earnings to be levied and withheld under said Distress Warrant.

3. Indebtedness Other Than For Wages, Salary Or Other Employment Compensation
Monies owed to the defaulting taxpayer(s) for indebtedness other than for wages, salary or other employment compensation are levied and bound by a Distress Warrant For The Levy Of Monies Owed To Taxpayer(s) at the time that this warrant is served up to the amount of the warrant. The person or entity served is required to withhold all monies owed to the defaulting taxpayer(s) at the time of service of the warrant for such non- employment indebtedness up to the amount of the warrant. In regard to such non-employment indebtedness, a Distress Warrant For The Levy Of Monies Owed To Taxpayer(s) also binds and requires to be withheld any monies for such indebtedness which becomes due to the defaulting taxpayer(s) after service of the warrant, but before the expiration of the thirty (30) day period during which the person or entity served has to answer the warrant to the extent that monies previously bound under the warrant are not sufficient to satisfy the warrant. The aggregate of all monies bound and withheld under the warrant, whether for nonemployment indebtedness which was due at the time of service or which became due during the first thirty (30) days after service, shall not exceed the amount of the warrant.

4. Multiple Warrants, Garnishments Or Orders Of Withholding
If the person or entity served by a Distress Warrant for the Levy Of Monies Owed To Taxpayer(s) is subject to multiple warrants and/or garnishments on the same

defaulting taxpayer(s), the order in which such warrants and garnishments are to be withheld and satisfied is to be governed by Miss. Code Ann. S11-35-24 with the warrant being treated as if it is a garnishment. This priority does not, however, apply to an Order of Withholding under Miss. Code Ann. S93-11-111 in regard to the defaulting taxpayer(s), since, by statute, such Order of Withholding is not considered to be a garnishment. If the person or entity served with the Distress Warrant For The Levy Of Monies Owed To Taxpayer(s) is at the time of service of the warrant or at some later time required to withhold from defaulting taxpayer(s)' wages under an Order Of Withholding for child support, the full amount of the monies to be withheld under the warrant is still to be withheld per pay period to the extent that there are disposable earnings remaining after the monies under the Order of Withholding have been withheld. The person or entity served is to withhold first for the amount under the Order of Withholding and then for the amount under the warrant. In such cases, the amount of disposable earnings which is levied under the warrant is to be determined as with any other warrant without any deduction or adjustment for the monies paid under the Order Of Withholding. The amount resulting from this computation will be the amount to be withheld and remitted under the warrant unless it is greater than the difference between the total amount of disposable earnings and the amount to be withheld under the Order of Withholding in which case this difference will be the amount to be withheld and remitted.

5. Remittance Of Monies Bound Under Distress Warrants For The Levy Of Monies Owed To Taxpayer(s)
   a. Monies Withheld From Wages, Salary Or Other Employment Compensation
      Unless otherwise authorized, all monies from wages, salary or other employment compensation which are bound and levied by a Distress Warrant For The Levy Of Monies Owed To Taxpayer(s) shall be remitted to the Mississippi State Tax Commission within thirty (30) days from the end of the pay period for which such monies were withheld from disposable earnings of the defaulting taxpayer(s)
   b. Monies Levied For Non-Employment Indebtedness
      Unless otherwise authorized, all monies for non-employment indebtedness which is bound and levied by a Distress Warrant For The Levy Of Monies Owed To Taxpayer(s) shall be remitted to the Mississippi State Tax Commission within thirty (30) days from the date that the answer to the Distress Warrant For The Levy Of Monies Owed To Taxpayer(s) is due.
   c. Payments Of Monies Levied Under Distress Warrants To Reflect Taxpayer(s)' Name, Warrant Number And Control Number.
      All payments to the Mississippi State Tax Commission of monies levied under a Distress Warrant For The Levy Of Monies Owed To Taxpayer(s) shall reflect the name of the defaulting taxpayer(s), the warrant number and the control number of the warrant.
   d. Request For A Change In The Time Period For Payment
      If a person or entity required to remit monies under a Distress Warrant For The Levy Of Monies Owed To Taxpayer(s) desires a different time period for the remittance of monies from that set out in subsections (a) and (b) above, such person or entity can make a request to the Chairman and Commissioner of Revenue for a change in this period. Such a request shall be made in writing

and shall include therein the reasons for requesting the change. Upon consideration of this request, the Chairman and Commissioner of Revenue or his designee shall advise the requesting person or entity as to whether the request is granted.

104 Personal Liability of Person Or Entity Served With Distress Warrant For The Levy Of Monies Owed To taxpayer(s)

If a person or entity served with a Distress Warrant For The Levy Of Monies Owed To Taxpayer(s) fails to withhold and/or remit to the Mississippi State Tax Commission the monies bound and levied by said warrant, the person or entity served shall be personally liable to the Mississippi State Tax Commission for said monies. If after expiration of the time period for the remittance of the monies bound and levied under a Distress Warrant For The Levy Of Monies Owed To Taxpayer(s), the Chairman and Commissioner of Revenue finds that the person or entity served with the warrant did not remit to the Mississippi State Tax Commission all monies bound, levied and required to be remitted under the warrant, the Chairman and Commissioner of Revenue shall assess said person or entity for the taxes, penalties, interest and cost included in the warrant in the amount of the monies which were bound and levied under the warrant, but which were not remitted, and shall therein advise the person or entity served of his personal liability for said monies, demand payment of same, and further advise person or entity served that levy and collection process may be issued against him for said liability. If payment of this liability is not forthcoming, the Commissioner may issue, in the same manner as other taxes, levy and collection process against the person or entity served to collect this personal liability for monies which should have been remitted under the warrant.

105 (Reserved)

106 (Reserved)

107 (Reserved)

108 (Reserved)

109 (Reserved)

110 (Reserved)