By: Representative Denton

To: Ways and Means

HOUSE BILL NO. 722

AN ACT TO AMEND SECTIONS 27-7-45 AND 27-7-55, MISSISSIPPI CODE OF 1972, TO REMOVE PROVISIONS THAT PROVIDE THAT IF ANY OFFICER OR EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION THEREOF DOES NOT PAY STATE INCOME TAX BY AUGUST 15 AFTER SUCH INCOME TAX BECOMES DUE AND PAYABLE, THAT HIS WAGES, SALARY OR OTHER COMPENSATION SHALL BE WITHHELD AND PAID TO THE DEPARTMENT OF REVENUE; TO PROVIDE THAT THE DEPARTMENT OF REVENUE MAY PURSUE ANY AND ALL REMEDIES FOR COLLECTION THAT ARE AVAILABLE TO IT IN THE COLLECTION OF INCOME TAXES OWED BY PERSONS WHO ARE NOT PUBLIC OFFICERS OR EMPLOYEES; TO PROVIDE THAT ANY GARNISHMENT MADE IN ACCORDANCE WITH LAW SHALL BE FOR AN AMOUNT OF 25% OF THE EMPLOYEE'S OR OFFICER'S SALARY OR THE AMOUNT OF THE OUTSTANDING TAX LIABILITY, WHICHEVER IS LESS; TO AMEND SECTION 27-65-40, MISSISSIPPI CODE OF 1972, TO REMOVE PROVISIONS THAT PROVIDE THAT IF ANY OFFICER OR EMPLOYEE OF THE STATE OF MISSISSIPPI, OR ANY POLITICAL SUBDIVISION THEREOF, DOES NOT PAY THE STATE SALES TAX FOR WHICH HE IS RESPONSIBLE TO PAY WITHIN TWO MONTHS AFTER SUCH SALES TAX BECOMES DUE AND PAYABLE, HE IS NOT ELIGIBLE TO RECEIVE ANY SALARY OR OTHER EMOLUMENTS OF OFFICE FROM THE STATE, OR FROM ANY POLITICAL SUBDIVISION THEREOF, UNTIL THE SALES TAX, INTEREST AND PENALTY, ARE PAID IN FULL; TO PROVIDE THAT THE DEPARTMENT OF REVENUE MAY PURSUE ALL REMEDIES AGAINST A PUBLIC EMPLOYEE OR OFFICER AS ARE AVAILABLE AGAINST OTHER PERSONS WHO FAIL TO PAY TAXES LEVIED UNDER THE SALES TAX LAW; TO PROVIDE THAT ANY GARNISHMENT TAKEN AGAINST SUCH PUBLIC EMPLOYEE OR OFFICER SHALL BE FOR AN AMOUNT OF 25% OF THE EMPLOYEE'S OR OFFICER'S SALARY OR THE AMOUNT OF THE OUTSTANDING TAX LIABILITY, WHICHEVER IS LESS; TO AMEND SECTIONS 85-3-4 AND 7-7-43, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 27-7-45, Mississippi Code of 1972, is amended as follows:

27-7-45. (1) The tax levied by this article shall be paid when the return is due except as hereinafter provided.

(2) If any officer or employee of the State of Mississippi, or any political subdivision thereof, * * * is in arrears in child support payments for thirty (30) days after such payments become due and payable, his wages, salary or other compensation shall be withheld and paid to the * * * Department of Human Services * * * in satisfaction of * * * any child support arrearage until paid in full. This provision shall apply to any installments of * * * child support due, after the first installment, to require payment of the entire balance of child support * * * due, plus interest and penalty, if any, before an officer or employee of the State of Mississippi, or any political subdivision thereof, is eligible to draw any salary or other emoluments of office. * * * The Department of Human Services is required to furnish the officer's or the employee's employer, or other appropriate officer of the State of Mississippi or its political subdivision, as the case may be, with notice that child support payments have not been made. This notice shall serve as a lien or attachment upon any salary or compensation due any employee or officer, disregard of this notice creating personal liability against such officer for the full amount of the income tax due, plus interest and penalty. * * * Regardless of the amount designated in the Department of Human

Service's notice for withholding and regardless of other fees imposed or amounts withheld pursuant to this section, the payor shall not deduct from the income of the officer or employee in excess of the amounts allowed under Section 303(b) of the Consumer Credit Protection Act, being 15 USCS 1673, as amended.

(3) The * * * child support payment may be paid with uncertified check during such time and under such regulations as the * * * Department of Human Services shall prescribe, but if the check so received is not paid by the bank on which it is drawn, the officer or employee for whom such check is tendered shall remain liable for the * * * child support payment and for all penalties, the same as if such check had not been tendered.

(4) If a corporation is subject to LIFO recapture pursuant to Section 1363(d) of the Code, then:

(a) Any increase in the tax imposed by Section 27-7-5 by reason of the inclusion of the LIFO recapture amount in its income shall be payable in four (4) equal installments;

(b) The first installment shall be paid on or before the due date (determined without regard to extensions) for filing the return for the first taxable year for which the corporation was subject to the LIFO recapture;

(c) The three (3) succeeding installments shall be paid on or before the due date (determined without regard to extensions) for filing the corporation's return for the three (3) succeeding taxable years; and

(d) For purposes of computing interest on underpayments, the last three (3) installments shall not be considered underpayments until after the payment due date specified above.

(5) For purposes of this section, a political subdivision includes, but is not limited to, a county or separate school district, institution of higher learning, state college or university, or state community college.

(6) The tax levied by this article and paid by a business enterprise located in a redevelopment project area under Sections 57-91-1 through 57-91-11 shall be deposited into the Redevelopment Project Incentive Fund created in Section 57-91-9.

(7) If any officer or employee of the State of Mississippi, or any political subdivision thereof, does not pay his state income tax on or before August 15 after such income tax becomes due and payable, the Department of Revenue may pursue any and all remedies for collection that are available to it in the collection of such taxes owed by persons who are not public officers or employees. Any garnishment made in accordance with law shall be for an amount of twenty-five percent (25%) of the employee's or officer's salary or for the amount of the outstanding tax liability, whichever is less.

SECTION 2. Section 27-7-55, Mississippi Code of 1972, is amended as follows:

27-7-55. If any taxpayer, liable for the payment of income taxes, penalties or interest, fails or refuses to pay them after receiving the notice and demands as provided in Sections 27-7-49, 27-7-51 and 27-7-53, and if the taxpayer has not filed a timely appeal to the board of review as provided by law, the commissioner may file a notice of tax lien for the income taxes, penalties and interest with the circuit clerk of the county in which the taxpayer resides or owns property, which shall be enrolled on the judgment roll. Immediately upon receipt of the notice of tax lien for income taxes, penalties and interest, the circuit clerk shall enter upon the judgment roll, in the appropriate columns, the name of the taxpayer as judgment debtor, the name of the commissioner or Department of Revenue as judgment creditor, the amount of the taxes, penalties and interest, and the date and time of enrollment. The judgment shall be valid as against mortgagees, pledgees, entrusters, purchasers, judgment creditors, and other persons from the time of filing with the clerk. The amount of the judgment shall be a debt due the State of Mississippi and remain a lien upon all property and rights to property belonging to the taxpayer, both real and personal, including choses in action, with the same force and like effect as any enrolled judgment of a court of record, and shall continue until satisfied; however, the judgment shall not be a lien upon the property of the taxpayer for a longer period than seven (7) years from the date of the filing of the notice of tax lien for income taxes, penalties and interest

unless an action is brought on the lien before the expiration of such time or unless the commissioner refiles the notice of tax lien before the expiration of such time. The judgment shall be a lien upon the property of the taxpayer for a period of seven (7) years from the date of refiling such notice of tax lien unless an action is brought on the lien before the expiration of such time or unless the commissioner refiles such notice of tax lien before the expiration of such time. There shall be no limit upon the number of times that the commissioner may refile notices of tax liens. The judgment shall serve as authority for the issuance of writs of execution, writs of attachment, writs of garnishment or other remedial writs. The commissioner may issue warrants for collection of income taxes from such judgments in lieu of the issuance of any remedial writ by the circuit clerk.

Upon failure to pay the taxes imposed under this article by any taxpayer who has executed any bond, the commissioner shall give notice of the failure to the sureties of the bond and demand payment of the tax, penalties and interest within ten (10) days. If the sureties of the taxpayer's bond shall fail or refuse to pay the penal sum demanded within the ten (10) days allowed, the commissioner may file a notice of tax lien with the circuit clerk of the county in which the sureties reside or own property, which shall be enrolled upon the judgment roll, and the commissioner may proceed to collect from the sureties as provided in this section for collecting from any judgment debtor.

The commissioner is hereby authorized to pay the clerk's fee for enrolling certificates of indebtedness and any court costs that may be adjudged against the department or commissioner out of funds appropriated by the Legislature to defray expenses of the Department of Revenue. Any action taken against public employees or officers for failing to pay taxes levied by this chapter shall be consistent with the requirements of Section 27-7-45.

SECTION 3. Section 27-65-40, Mississippi Code of 1972, is amended as follows:

27-65-40. If any officer or employee of the State of Mississippi, or any political subdivision thereof, does not pay the state sales tax for which he is responsible to pay within two (2) months after such sales tax becomes due and payable, *** * *** the Department of Revenue may pursue all remedies against such taxpayer as are available against other persons who fail to pay taxes levied by this chapter. Any garnishment taken against such public employee or officer shall be for an amount of twenty-five percent (25%) of the employee's or officer's salary or for the outstanding tax liability, whichever is less.

SECTION 4. Section 85-3-4, Mississippi Code of 1972, is amended as follows:

85-3-4. (1) The wages, salaries or other compensation of laborers or employees, residents of this state, shall be exempt from seizure under attachment, execution or garnishment for a

period of thirty (30) days from the date of service of any writ of attachment, execution or garnishment.

(2) After the passage of the period of thirty (30) days described in subsection (1) of this section, the maximum part of the aggregate disposable earnings (as defined by Section 1672(b) of Title 15, USCS) of an individual that may be levied by attachment, execution or garnishment shall be:

(a) In the case of earnings for any workweek, the lesser amount of either * * *:

(i) Twenty-five percent (25%) of his disposable earnings for that week, or

(ii) The amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage (prescribed by section 206 (a)(1) of Title 29, USCS) in effect at the time the earnings are payable; or

(b) In the case of earnings for any period other than a week, the amount by which his disposable earnings exceed the following "multiple" of the federal minimum hourly wage which is equivalent in effect to that set forth in * * * paragraph (a)(ii) of this subsection (2): The number of workweeks, or fractions thereof multiplied by thirty (30) multiplied by the applicable federal minimum wage.

(3) (a) The restrictions of subsections (1) and (2) of this section do not apply in the case of:

(i) Any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by state law, which affords substantial due process, and which is subject to judicial review.

(ii) Any debt due for any state or local tax that is being levied and garnished in the amount provided in Section 27-7-45 or 27-65-40.

(b) Except as provided in * * * paragraph (b)(iii) of this subsection (3), the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed:

(i) Where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), fifty percent (50%) of such individual's disposable earnings for that week; and

(ii) Where such individual is not supporting such a spouse or dependent child described in * * * paragraph (b)(i) of this subsection (3), sixty percent (60%) of such individual's disposable earnings for that week;

(iii) With respect to the disposable earnings of any individual for that workweek, the fifty percent (50%) specified in * * * paragraph (b)(i) of this subsection (3) shall be deemed to be fifty-five percent (55%) and the sixty percent

(60%) specified in * * * paragraph (b)(ii) of this subsection (3) shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the period of twelve (12) weeks which ends with the beginning of such workweek.

SECTION 5. Section 7-7-43, Mississippi Code of 1972, is amended as follows:

7-7-43. (1) Except as otherwise provided in subsection (3) of this section, the State Fiscal Officer, any chancery or city clerk, or the fiscal officer of any county or separate school district, institution of higher learning, state college, university or state community college, shall not issue any warrant upon any allowance made to, or claim in favor of, any person, his agent, or assignee who shall be indebted to the state, or against whom there shall be any balance appearing in favor of the state; but such officer shall allow such debtor a credit on his account for such allowance or claim.

(2) For state tax claims, the * * * Commissioner of Revenue is required to furnish the appropriate fiscal officer with notice that state taxes have not been paid. Except as otherwise provided in subsection (3) of this section, this notice shall serve as a stop order upon any allowance made to, or claim in favor of, any person, his agent, or assignee who shall be indebted to the state, or any political subdivision thereof, or against whom there shall

be any balance appearing in favor of the state or any political subdivision thereof. Disregard of the stop order notice shall create a personal liability against such fiscal officer for the full amount of state taxes due, plus interest and penalty.

(3) This section shall not apply in the case where a person's wages or salary are levied and garnished in the amount provided in Section 27-7-45 or 27-65-40.

SECTION 6. This act shall take effect and be in force from and after July 1, 2021.

ST: Income tax and sales tax liability; revise method of collecting from public officers or employees.