

By: Senator(s) Hawks, Johnson (19th), Kirby To: Finance

SENATE BILL NO. 2912

1 AN ACT TO CREATE A SPECIAL FUND DESIGNATED AS THE "TOBACCO
2 LITIGATION SETTLEMENT FUND" INTO WHICH SHALL BE DEPOSITED MONEY
3 RECEIVED AS SETTLEMENT OF ANY LITIGATION IN WHICH THE STATE OF
4 MISSISSIPPI IS A PLAINTIFF OR CLAIMANT FOR DAMAGES SUFFERED BY THE
5 STATE AS A RESULT OF THE USE OF TOBACCO BY RESIDENTS OF THE STATE;
6 TO PROVIDE THAT MONEY IN SUCH FUND SHALL BE USED TO PAY ATTORNEYS'
7 FEES IN CONNECTION WITH THE TOBACCO LITIGATION AND TO PROVIDE
8 REVENUE TO MAKE UP FOR THE LOSS OF SALES TAX REVENUE RESULTING
9 FROM A REDUCTION IN THE GENERAL SALES TAX RATE OF ONE PERCENT; TO
10 PLACE LIMITATIONS ON ATTORNEYS' FEES PAYABLE OUT OF THE FUND OR IN
11 CONNECTION WITH TOBACCO LITIGATION SETTLEMENTS; TO AMEND SECTIONS
12 27-65-15, 27-65-17, 27-65-19, 27-65-22, 27-65-23 AND 27-65-25,
13 MISSISSIPPI CODE OF 1972, TO REDUCE THE SALES TAX ON ALL ITEMS
14 CURRENTLY TAXED AT 7% TO 6%; AND FOR RELATED PURPOSES.

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

16 SECTION 1. (1) There is hereby created in the State
17 Treasury a special fund designated as the "Tobacco Litigation
18 Settlement Fund" into which shall be deposited such money as may
19 be received by the state or by any attorney as settlement of any
20 litigation in which the State of Mississippi is a plaintiff or
21 claimant for damages suffered by the state as a result of the use
22 of tobacco or tobacco products by the residents of the State of
23 Mississippi. Money in the fund shall not lapse at the end of the
24 fiscal year and interest on investments of money in the fund shall
25 be deposited into the fund. Money in the fund shall be
26 appropriated by the Legislature to pay attorneys' fees in
27 connection with the litigation for which the settlement money was
28 received and shall be distributed as provided for in subsection
29 (2) of this section.

30 (2) Of the money deposited into the Tobacco Litigation
31 Settlement Fund, an amount equal to an additional one percent (1%)
32 sales tax on all items currently taxed at six percent (6%) that

33 would have been collected during the preceding month under the
34 Mississippi Sales Tax Law had such additional one percent (1%) tax
35 been levied, shall be distributed from such fund as follows:

36 (a) Eighteen and one-half percent (18-1/2%) of an
37 amount that would be equal to an additional one percent (1%) sales
38 tax on business activities within a municipal corporation
39 currently taxed at six percent (6%) that would have been collected
40 during the preceding month had such additional one percent (1%)
41 tax been levied, except amounts that would have been collected
42 under the provisions of Sections 27-65-15, 27-65-19(3) and
43 27-65-21, shall be allocated for distribution to such municipality
44 and paid to such municipal corporation in the same manner as sales
45 tax revenue is distributed in Section 27-65-75(1).

46 (b) An amount equal to an additional one percent (1%)
47 sales tax on the proceeds derived from contractors' taxes levied
48 under Section 27-65-21 on contract for the construction or
49 reconstruction of highways designated under the Four-Lane Highway
50 program created under Section 65-3-97 that would have been
51 collected during the preceding month had such additional one
52 percent (1%) sales tax been levied, shall be deposited to the
53 credit of the State Highway Fund to be used to fund the Four-Lane
54 Highway Program in the same manner as provided for in Section
55 27-65-75(3).

56 (c) An amount equal to two and two hundred sixty-six
57 one-thousandths percent (2.266%) of an amount equal to an
58 additional one percent (1%) sales tax on all items currently taxed
59 at six percent (6%) that would have been collected during the
60 preceding month had such additional one percent (1%) tax been
61 levied, shall be deposited into the School Ad Valorem Tax
62 Reduction Fund or the Education Enhancement Fund in the same
63 manner as provided for in Section 27-65-75(7).

64 (d) An amount equal to nine and seventy-three
65 one-thousandths percent (9.073%) of an amount equal to an
66 additional one percent (1%) sales tax on all items currently taxed
67 at six percent (6%) that would have been collected during the
68 preceding month had such additional one percent (1%) tax been
69 levied, shall be deposited into the Education Enhancement Fund in

70 the same manner as provided for in Section 27-65-75(8).

71 (e) The remainder of the amount required to be
72 distributed pursuant to this subsection shall be paid to the State
73 Treasury to the credit of the General Fund.

74 (3) The State Tax Commission shall determine the amounts
75 required to be distributed pursuant to subsection (2) of this
76 section and the State Treasurer shall transfer the funds to the
77 appropriate accounts.

78 (4) Any attorney seeking fees to be paid out of the Tobacco
79 Litigation Settlement Fund shall be limited to recover only actual
80 expenses incurred plus One Hundred Fifty Dollars (\$150.00) per
81 hour for time actually expended in professional legal services on
82 behalf of the state's taxpayers in such litigation. This
83 limitation shall apply to all fees sought for any such litigation
84 on behalf of the state, including, without limitation, fees sought
85 through negotiation, court order, settlement agreement,
86 contingency fee arrangement, arbitration procedure, alternative
87 dispute resolution procedure or other arrangement for payment of
88 attorneys' fees. Full disclosure for public review of all
89 documents, including invoices, billing records, expense
90 reimbursement forms and other information in whatever form
91 maintained to document an attorney's time and expenses, must be
92 made to the Department of Finance and Administration in order to
93 authorize payment of any attorney's fees from the fund.

94 SECTION 2. Section 27-65-15, Mississippi Code of 1972, is
95 amended as follows:

96 27-65-15. Upon every person engaging or continuing within
97 this state in the business of mining, quarrying, drilling or
98 otherwise producing, or causing to be produced for sale, profit,
99 or commercial use, limestone, sand, gravel, dirt, coal, lignite or
100 other mineral or natural resource products, except timber, oil,
101 natural gas and salt, there is hereby levied and assessed and
102 shall be collected taxes as follows:

103 (a) Sales to consumers within this state shall be taxed
104 under Section 27-65-17 or Section 27-65-19, as the case may be.

105 (b) Sales defined as wholesale or exempt, used by the
106 producers as a component material of a contract taxable under
107 Section 27-65-21, as a raw material of a manufactured product, or
108 delivered outside this state, shall be taxed at six percent (6%)
109 of the gross proceeds of sales, exclusive of delivery charges, or
110 value when converted to use, whichever is greater, but not to
111 exceed Five Cents (5¢) per ton with respect to sand, gravel, dirt,
112 clay or limestone.

113 The commission shall prescribe equitable and uniform rules
114 for ascertaining value.

115 All privilege taxes levied upon persons engaged in the
116 production of natural resource products by this chapter shall be a
117 lien upon all such products so produced and such lien shall be
118 entitled to preference over all judgments, executions,
119 encumbrances or liens, whensoever created. All persons to or
120 through whom the title to such products pass shall be jointly and
121 severally liable for such tax until the same is paid in full.

122 The tax imposed in this section shall be collected by the
123 commissioner from the person in charge of the production
124 operations, and the commissioner is hereby authorized to make such
125 investigations and inspections of the production operations, from
126 time to time, as he may deem necessary for the purpose of
127 ascertaining the correct amount of tax due.

128 SECTION 3. Section 27-65-17, Mississippi Code of 1972, is
129 amended as follows:

130 27-65-17. (1) Upon every person engaging or continuing
131 within this state in the business of selling any tangible personal
132 property whatsoever there is hereby levied, assessed and shall be
133 collected a tax equal to six percent (6%) of the gross proceeds of
134 the retail sales of the business, except as otherwise provided
135 herein.

136 Retail sales of farm tractors shall be taxed at the rate of
137 one percent (1%) when made to farmers for agricultural purposes.

138 Retail sales of farm implements sold to farmers and used
139 directly in the production of poultry, ratite, domesticated fish
140 as defined in Section 69-7-501, livestock, livestock products,
141 agricultural crops or ornamental plant crops or used for other
142 agricultural purposes shall be taxed at the rate of three percent
143 (3%) when used on the farm. The three percent (3%) rate shall
144 also apply to all equipment used in logging, pulpwood operations
145 or tree farming which is either (a) self-propelled or which is (b)
146 mounted so that it is (i) permanently attached to other equipment
147 which is self-propelled or (ii) permanently attached to other
148 equipment drawn by a vehicle which is self-propelled.

149 Retail sales of aircraft, automobiles, trucks,
150 truck-tractors, semitrailers and mobile homes shall be taxed at
151 the rate of three percent (3%).

152 Sales of manufacturing machinery or manufacturing machine
153 parts when made to a manufacturer or custom processor for plant
154 use only when said machinery and machine parts will be used
155 exclusively and directly within this state in manufacturing a
156 commodity for sale, rental or in processing for a fee shall be
157 taxed at the rate of one and one-half percent (1-1/2%).

158 Sales of materials for use in track and track structures to a
159 railroad whose rates are fixed by the Interstate Commerce
160 Commission or the Mississippi Public Service Commission shall be
161 taxed at the rate of three percent (3%).

162 Sales of tangible personal property to electric power
163 associations for use in the ordinary and necessary operation of
164 their generating or distribution systems shall be taxed at the
165 rate of one percent (1%).

166 Wholesale sales of beer shall be taxed at the rate of six
167 percent (6%), and the retailer shall file a return and compute the
168 retail tax on retail sales but may take credit for the amount of

169 the tax paid to the wholesaler on said return covering the
170 subsequent sales of same property, provided adequate invoices and
171 records are maintained to substantiate the credit.

172 Wholesale sales of food and drink for human consumption to
173 full service vending machine operators to be sold through vending
174 machines located apart from and not connected with other taxable
175 businesses shall be taxed at the rate of eight percent (8%).

176 A manufacturer selling at retail in this state shall be
177 required to make returns of the gross proceeds of such sales and
178 pay the tax imposed in this section.

179 Any person exercising any privilege taxable under Section
180 27-65-15 and selling his natural resource products at wholesale or
181 to exempt persons shall pay the tax levied by said section in lieu
182 of the tax levied by this section.

183 (2) From and after January 1, 1995, retail sales of private
184 carriers of passengers and light carriers of property, as defined
185 in Section 27-51-101, shall be taxed an additional two percent
186 (2%).

187 SECTION 4. Section 27-65-19, Mississippi Code of 1972, is
188 amended as follows:

189 27-65-19. (1) (a) Except as otherwise provided in this
190 subsection, upon every person selling to consumers, electricity,
191 current, power, potable water, steam, coal, natural gas, liquefied
192 petroleum gas or other fuel, there is hereby levied, assessed and
193 shall be collected a tax equal to six percent (6%) of the gross
194 income of the business. Provided, gross income from sales to
195 consumers of electricity, current, power, natural gas, liquefied
196 petroleum gas or other fuel for residential heating, lighting or
197 other residential noncommercial or nonagricultural use, and sales
198 of potable water for residential, noncommercial or nonagricultural
199 use shall be excluded from taxable gross income of the business.
200 Provided further, upon every such seller using electricity,
201 current, power, potable water, steam, coal, natural gas, liquefied

202 petroleum gas or other fuel for nonindustrial purposes, there is
203 hereby levied, assessed and shall be collected a tax equal to five
204 percent (5%) of the cost or value of the product or service used.

205 (b) There is hereby levied, assessed and shall be
206 collected a tax equal to one and one-half percent (1-1/2%) of the
207 gross income of the business when the electricity, current, power,
208 steam, coal, natural gas, liquefied petroleum gas or other fuel is
209 sold to or used by a manufacturer, custom processor or public
210 service company for industrial purposes, which shall include that
211 used to generate electricity, to operate an electrical
212 distribution or transmission system, to operate pipeline
213 compressor or pumping stations or to operate railroad locomotives;
214 provided, however, that:

215 (i) From and after July 1, 2000, through June 30,
216 2001, sales of fuel used to produce electric power by a company
217 primarily engaged in the business of producing, generating or
218 distributing electric power for sale shall be taxed at the rate of
219 one and one-eighth percent (1.125%);

220 (ii) From and after July 1, 2001, through June 30,
221 2002, sales of fuel used to produce electric power by a company
222 primarily engaged in the business of producing, generating or
223 distributing electric power for sale shall be taxed at the rate of
224 three-fourths of one percent (0.75%);

225 (iii) From and after July 1, 2002, through June
226 30, 2003, sales of fuel used to produce electric power by a
227 company primarily engaged in the business of producing, generating
228 or distributing electric power for sale shall be taxed at the rate
229 of three-eighths of one percent (0.375%);

230 (iv) From and after July 1, 2003, sales of fuel
231 used to produce electric power by a company primarily engaged in
232 the business of producing, generating or distributing electric
233 power for sale shall be exempt from sales tax as provided in
234 Section 27-65-107.

235 (c) The one and one-half percent (1-1/2%) industrial
236 rate provided for in this subsection shall also apply when the
237 electricity, current, power, steam, coal, natural gas, liquefied
238 petroleum gas or other fuel is sold to a producer or processor for
239 use directly in the production of poultry or poultry products, the
240 production of livestock and livestock products, the production of
241 plants or food by commercial horticulturists, the processing of
242 milk and milk products, the processing of poultry and livestock
243 feed, and the irrigation of farm crops.

244 (d) The one and one-half percent (1-1/2%) rate provided
245 for in this subsection shall not apply to sales of fuel for
246 automobiles, trucks, truck-tractors, buses, farm tractors or
247 airplanes.

248 (e) Upon every person operating a telegraph or
249 telephone business for the transmission of messages or
250 conversations between points within this state, there is hereby
251 levied, assessed and shall be collected, a tax equal to six
252 percent (6%) of the gross income of such business, with no
253 deduction or allowance for any part of an intrastate rate charge
254 because of routing across a state line. However, any sale of a
255 prepaid telephone calling card or prepaid authorization number, or
256 both, shall be deemed to be the sale of tangible personal property
257 subject only to such taxes imposed by law on the sale of tangible
258 personal property. If the sale of a prepaid telephone calling
259 card or prepaid authorization number does not take place at the
260 vendor's place of business, it shall be conclusively determined to
261 take place at the customer's shipping address. The
262 reauthorization of a prepaid telephone calling card or a prepaid
263 authorization number shall be conclusively determined to take
264 place at the customer's billing address.

265 (2) Persons making sales to consumers of electricity,
266 current, power, natural gas, liquefied petroleum gas or other fuel
267 for residential heating, lighting or other residential

268 noncommercial or nonagricultural use or sales of potable water for
269 residential, noncommercial or nonagricultural use shall indicate
270 on each statement rendered to customers that such charges are
271 exempt from sales taxes.

272 (3) There is hereby levied, assessed and shall be paid on
273 transportation charges on shipments moving between points within
274 this state when paid directly by the consumer, a tax equal to the
275 rate applicable to the sale of the property being transported.
276 Such tax shall be reported and paid directly to the State Tax
277 Commission by the consumer.

278 SECTION 5. Section 27-65-22, Mississippi Code of 1972, is
279 amended as follows:

280 27-65-22. (1) Upon every person engaging or continuing in
281 any amusement business or activity, which shall include all manner
282 and forms of entertainment and amusement, all forms of diversion,
283 sport, recreation or pastime, shows, exhibitions, contests,
284 displays, games or any other and all methods of obtaining
285 admission charges, donations, contributions or monetary charges of
286 any character, from the general public or a limited or selected
287 number thereof, directly or indirectly in return for other than
288 tangible property or specific personal or professional services,
289 whether such amusement is held or conducted in a public or private
290 building, hotel, tent, pavilion, lot or resort, enclosed or in the
291 open, there is hereby levied, assessed and shall be collected a
292 tax equal to six percent (6%) of the gross income received as
293 admission, except as otherwise provided herein. In lieu of the
294 rate set forth above, there is hereby imposed, levied and
295 assessed, to be collected as hereinafter provided, a tax of three
296 percent (3%) of gross revenue derived from sales of admission to
297 publicly owned enclosed coliseums and auditoriums (except
298 admissions to athletic contests between colleges and
299 universities). There is hereby imposed, levied and assessed a tax
300 of six percent (6%) of gross revenue derived from sales of

301 admission to events conducted on property managed by the
302 Mississippi Veterans Memorial Stadium, which tax shall be
303 administered in the manner prescribed in this chapter, subject,
304 however, to the provisions of Sections 55-23-3 through 55-23-11.

305 (2) The operator of any place of amusement in this state
306 shall collect the tax imposed by this section, in addition to the
307 price charged for admission to any place of amusement, and under
308 all circumstances the person conducting the amusement shall be
309 liable for, and pay the tax imposed based upon the actual charge
310 for such admission. Where permits are obtained for conducting
311 temporary amusements by persons who are not the owners, lessees or
312 custodians of the buildings, lots or places where the amusements
313 are to be conducted, or where such temporary amusement is
314 permitted by the owner, lessee or custodian of any place to be
315 conducted without the procurement of a permit as required by this
316 chapter, the tax imposed by this chapter shall be paid by the
317 owner, lessee or custodian of such place where such temporary
318 amusement is held or conducted, unless paid by the person
319 conducting the amusement, and the applicant for such temporary
320 permit shall furnish with the application therefor, the name and
321 address of the owner, lessee or custodian of the premises upon
322 which such amusement is to be conducted, and such owner, lessee or
323 custodian shall be notified by the commission of the issuance of
324 such permit, and of the joint liability for such tax.

325 (3) The tax imposed by this section shall not be levied or
326 collected upon:

327 (a) Any admissions charged at any place of amusement
328 operated by a religious, charitable or educational organization,
329 or by a nonprofit civic club or fraternal organization (i) when
330 the net proceeds of such admissions do not inure to any one or
331 more individuals within such organization and are to be used
332 solely for religious, charitable, educational or civic purposes;
333 or (ii) when the entire net proceeds are used to defray the normal

334 operating expenses of such organization, such as loan payments,
335 maintenance costs, repairs and other operating expenses;

336 (b) Any admissions charged to hear gospel singing when
337 promoted by a duly constituted local, bona fide nonprofit
338 charitable or religious organization, irrespective of the fact
339 that the performers and promoters are paid out of the proceeds of
340 admissions collected, provided the program is composed entirely of
341 gospel singing and not generally mixed with hillbilly or popular
342 singing;

343 (c) Any admissions charged at any athletic games or
344 contests between high schools or between grammar schools;

345 (d) Any admissions or tickets to or for baseball games
346 between teams operated under a professional league franchise;

347 (e) Any admissions to county, state or community fairs,
348 or any admissions to entertainments presented in community homes
349 or houses which are publicly owned and controlled, and the
350 proceeds of which do not inure to any individual or individuals;

351 (f) Any admissions or tickets to organized garden
352 pilgrimages and to antebellum and historic houses when sponsored
353 by an organized civic or garden club;

354 (g) Any admissions to any golf tournament held under
355 the auspices of the Professional Golf Association or United States
356 Golf Association wherein touring professionals compete, if such
357 tournament is sponsored by a nonprofit association incorporated
358 under the laws of the State of Mississippi where no dividends are
359 declared and the proceeds do not inure to any individual or group;

360 (h) Any admissions to university or community college
361 conference, state, regional or national playoffs or championships;

362 (i) Any admissions or fees charged by any county or
363 municipally owned and operated swimming pools, golf courses and
364 tennis courts other than sales or rental of tangible personal
365 property;

366 (j) Any admissions charged for the performance of

367 symphony orchestras, operas, vocal or instrumental artists in
368 which professional or amateur performers are compensated out of
369 the proceeds of such admissions, when sponsored by local music or
370 charity associations, or amateur dramatic performances or
371 professional dramatic productions when sponsored by a children's
372 dramatic association, where no dividends are declared, profits
373 received, nor any salary or compensation paid to any of the
374 members of such associations, or to any person for procuring or
375 producing such performance; and

376 (k) Any admissions or tickets to or for hockey games
377 between teams operated under a professional league franchise.

378 SECTION 6. Section 27-65-23, Mississippi Code of 1972, is
379 amended as follows:

380 27-65-23. Upon every person engaging or continuing in any of
381 the following businesses or activities there is hereby levied,
382 assessed and shall be collected a tax equal to six percent (6%) of
383 the gross income of the business, except as otherwise provided:

384 Air conditioning installation or repairs;

385 Automobile, aircraft, motorcycle, boat or any other
386 vehicle repairing or servicing;

387 Billiards, pool or domino parlors;

388 Bowling or tenpin alleys;

389 Burglar and fire alarm systems or services;

390 Car washing--automatic, self-service, or manual;

391 Computer software sales and services;

392 Cotton compresses or cotton warehouses;

393 Custom creosoting or treating, custom planing, custom
394 sawing;

395 Custom meat processing;

396 Electricians, electrical work, wiring, all repairs or
397 installation of electrical equipment;

398 Elevator or escalator installing, repairing or servicing;

399 Film developing or photo finishing;

400 Foundries, machine or general repairing;
401 Furniture repairing or upholstering;
402 Grading, excavating, ditching, dredging or landscaping;
403 Hotels, motels, tourist courts or camps, trailer parks;
404 Insulating services or repairs;
405 Jewelry or watch repairing;
406 Laundering, cleaning, pressing or dyeing;
407 Marina services;
408 Mattress renovating;
409 Office and business machine repairing;
410 Parking garages and lots;
411 Plumbing or pipe fitting;
412 Public storage warehouses;
413 Refrigerating equipment repairs;
414 Radio or television installing, repairing or servicing;
415 Renting or leasing personal property used within this
416 state;
417 Services performed in connection with geophysical
418 surveying, exploring, developing, drilling, producing,
419 distributing, or testing of oil, gas, water and other mineral
420 resources;
421 Shoe repairing;
422 Storage lockers;
423 Telephone answering or paging services;
424 Termite or pest control services;
425 Tin and sheet metal shops;
426 TV cable systems, subscription TV services, and other
427 similar activities;
428 Vulcanizing, repairing or recapping of tires or tubes;
429 Welding; and
430 Woodworking or wood turning shops.
431 Income from services taxed herein performed for electric
432 power associations in the ordinary and necessary operation of

433 their generating or distribution systems shall be taxed at the
434 rate of one percent (1%).

435 Income from services taxed herein performed on materials for
436 use in track or track structures to a railroad whose rates are
437 fixed by the Interstate Commerce Commission or the Mississippi
438 Public Service Commission shall be taxed at the rate of three
439 percent (3%).

440 Income from renting or leasing tangible personal property
441 used within this state shall be taxed at the same rates as sales
442 of the same property.

443 Persons doing business in this state who rent transportation
444 equipment with a situs within or without the state to common,
445 contract or private commercial carriers are taxed on that part of
446 the income derived from use within this state. If specific
447 accounting is impracticable, a formula may be used with approval
448 of the commissioner.

449 A lessor may deduct from the tax computed on the rental
450 income from tangible personal property a credit for sales or use
451 tax paid to this state at the time of purchase of the specific
452 personal property being leased or rented until such credit has
453 been exhausted.

454 Charges for custom processing and repairing services may be
455 excluded from gross taxable income when the property on which the
456 service was performed is delivered to the customer in another
457 state either by common carrier or in the seller's equipment.

458 When a taxpayer performs unitary services covered by this
459 section, which are performed both in intrastate and interstate
460 commerce, the commissioner is hereby invested with authority to
461 formulate in each particular case and to fix for such taxpayer in
462 each instance formulae of apportionment which will apportion to
463 this state, for taxation, that portion of the services which are
464 performed within the State of Mississippi.

465 SECTION 7. Section 27-65-25, Mississippi Code of 1972, is

466 amended as follows:

467 27-65-25. Upon every person engaging or continuing within
468 this state in the business of selling alcoholic beverages, the
469 sales of which are legal under the provisions of Chapter 1 of
470 Title 67, Mississippi Code of 1972, there is hereby levied,
471 assessed and shall be collected a tax equal to six percent (6%) of
472 the gross proceeds of the retail sales of the business. All sales
473 at wholesale to retailers shall be taxed at the same rate as
474 provided in this section for retail sales. A retailer in
475 computing the tax on sales may take credit for the amount of the
476 tax paid to the wholesaler at the rates provided herein and remit
477 the difference to the commissioner, provided adequate records and
478 all invoices are maintained to substantiate the credit claimed.

479 SECTION 8. This act shall take effect and be in force from
480 and after July 1, 1999.