AN ACT TO AMEND SECTIONS 27-65-31 AND 27-67-11, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF A SELLER MAKES A RETAIL SALE OF A TRACTOR OR FARM IMPLEMENTS TO A PERSON AND COLLECTS SALES OR USE TAX AT A CERTAIN RATE BASED UPON WRITTEN DOCUMENTATION FROM THE PURCHASER INDICATING THAT THE PURCHASER IS A FARMER AND WILL USE THE ITEMS PURCHASED FOR AGRICULTURAL PURPOSES, THE SELLER WILL NOT BE LIABLE FOR ANY ADDITIONAL TAX DUE IF THE STATE TAX COMMISSION DETERMINES THAT THE SALE WAS NOT MADE TO A FARMER FOR AGRICULTURAL PURPOSES; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 27-65-31, Mississippi Code of 1972, is amended as follows:

27-65-31. Any person liable for a privilege tax levied and assessed by this chapter except the taxes levied by Sections 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of 1972, shall add the amount of such tax due by him to the sales price or gross income and, in addition thereto, shall collect, insofar as practicable, the amount of the tax due by him from the purchaser at the time the sales price or gross income is collected.

The commissioner is authorized, in his discretion, to prescribe by rule or regulation, brackets or schedules by which the applicable tax shall be collected from the purchaser.

The commissioner shall have the authority to make changes as necessary by rule or regulation to implement an agreement for the collection of sales tax by direct marketers with limited contact in Mississippi if, in his discretion, it is beneficial to the state for him to do so.

It shall be unlawful for any person, who is liable for a privilege tax levied by this chapter except the taxes levied by
Sections 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of 1972, to fail or refuse to add to the sales price and collect, insofar as practicable, the amount of tax due by him on each sale, except where the tax was included in the cost of furnishing service when said cost was a factor in the fixing of rates and charges.

The tax due under the provisions of this chapter shall be computed and paid on gross income or gross proceeds of sales of the business, regardless of the fact that small unit sales may be within the bracket of one (1) of the schedules which does not provide for the collection of the tax from the customer.

Nothing in this section with reference to the collection of the tax from the customer shall be construed to impair, abridge, alter or affect the obligation of any contract in existence at the time it becomes effective.

When the tax collected for any filing period is in excess of the amount due, the total tax collected, including that in excess of the computed liability, shall be paid to the commissioner. This provision shall be construed with other provisions of the law and given effect so as to result in the payment to the commissioner of the total tax collected if in excess of the amount due when computed at the applicable rates.

The funds collected by the taxpayer (seller) from the purchaser pursuant to the provisions of this chapter shall be considered "trust fund monies" and the taxpayer shall hold these funds in trust for the State of Mississippi; said funds to be separately accounted for as provided by regulation of the commissioner. If the taxpayer fails to remit these trust fund monies as required by law, then the taxpayer may be assessed with a penalty in three (3) times the amount of taxes due. This penalty is to be assessed and collected in the same manner as taxes imposed by this chapter and shall be in addition to all other penalties and/or interest otherwise imposed. For purposes
of this section there shall be a presumption that the taxpayer collected the tax from the customer or purchaser.

If a taxpayer (seller) makes a retail sale of a farm tractor or farm implements to a person and collects the tax at the rate provided in Section 27-65-17 based upon written documentation from the purchaser indicating that the purchaser is a farmer and will use the items purchased for agricultural purposes, the taxpayer (seller) shall not be liable for any additional tax due if the commission determines that the sale was not made to a farmer for agricultural purposes.

Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined in a sum not less than Fifty Dollars ($50.00) nor more than One Hundred Dollars ($100.00).

SECTION 2. Section 27-67-11, Mississippi Code of 1972, is amended as follows:

27-67-11. (1) Every person maintaining a place of business, or doing business, in this state, shall collect the tax imposed by this article from the purchaser and remit the tax to the commissioner as hereinafter provided. Failure to collect the tax from the purchaser shall not relieve the seller of liability for payment of the tax.

(2) Any person selling tangible personal property that does not maintain a place of business in this state may be authorized by the commissioner to collect the tax from customers in Mississippi who are liable for its payment, and such person shall remit the tax to the commissioner in the same manner and subject to the same requirements as a person maintaining a place of business or doing business within this state. Such authority may be cancelled at any time when, in the judgment of the commissioner, the tax can be collected more effectively from the purchaser in this state. When the tax has been collected from the
purchaser, the seller shall be liable for payment of the tax to
the commissioner.

(3) Every person required or authorized to collect the tax
shall add to the sales price of tangible personal property or
services the amount of the tax imposed on purchaser for the use,
storage, or consumption thereof, and, when so added, the tax shall
be a debt from the purchaser to the seller until paid, and shall
be collectible at law in the same manner as other debts. It shall
be unlawful for any person to advertise, hold out, or state to the
public or to any customer that the tax herein imposed will be
assumed or absorbed by the seller or that any part thereof will be
refunded. Said tax shall be stated separately from the sales
price on the sales invoice and shown separately on the seller's
records. The purchaser shall pay the tax to the seller as trustee
for and on account of the state.

(4) If a seller makes a retail sale of a farm tractor or
farm implements to a person and collects the tax at the rate
provided in Section 27-65-17 based upon written documentation from
the purchaser indicating that the purchaser is a farmer and will
use the items purchased for agricultural purposes, the seller
shall not be liable for any additional tax due if the commission
determines that the sale was not made to a farmer for agricultural
purposes.

SECTION 3. This act shall take effect and be in force from
and after July 1, 2001.