SENATE BILL NO. 2138

AN ACT TO AMEND SECTION 27-65-17, MISSISSIPPI CODE OF 1972, TO REDUCE THE SALES TAX RATE ON RETAIL SALES OF UNPREPARED FOOD FOR HUMAN CONSUMPTION TO 1.3%; TO AMEND SECTION 27-65-75, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ALL OF THE SALES TAX COLLECTED ON RETAIL SALES OF PREPARED FOOD WITHIN A MUNICIPALITY SHALL BE ALLOCATED FOR DISTRIBUTION AND PAID TO SUCH MUNICIPALITY; TO INCREASE THE AMOUNT OF THE SALES TAX DIVERSION TO THE SCHOOL AD VALOREM TAX REDUCTION FUND AND THE EDUCATION ENHANCEMENT FUND; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 27-65-17, Mississippi Code of 1972, is amended as follows:

27-65-17. (1) Upon every person engaging or continuing within this state in the business of selling any tangible personal property whatsoever there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross proceeds of the retail sales of the business, except as otherwise provided herein.

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

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

Except as otherwise provided in subsection (3) of this section, retail sales of aircraft, automobiles, trucks, truck-tractors, semitrailers and mobile homes shall be taxed at the rate of three percent (3%).

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

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

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

Wholesale sales of beer shall be taxed at the rate of seven percent (7%), and the retailer shall file a return and compute the retail tax on retail sales but may take credit for the amount of the tax paid to the wholesaler on said return covering the subsequent sales of same property, provided adequate invoices and records are maintained to substantiate the credit.

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

A manufacturer selling at retail in this state shall be required to make returns of the gross proceeds of such sales and pay the tax imposed in this section.
Any person exercising any privilege taxable under Section 27-65-15 and selling his natural resource products at wholesale or to exempt persons shall pay the tax levied by said section in lieu of the tax levied by this section.

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

(3) In lieu of the tax levied in subsection (1) of this section, there is levied on retail sales of truck-tractors and semitrailers used in interstate commerce and registered under the International Registration Plan (IRP) or any similar reciprocity agreement or compact relating to the proportional registration of commercial vehicles entered into as provided for in Section 27-19-143, a tax at the rate of three percent (3%) of the portion of the sale that is attributable to the usage of such truck-tractor or semitrailer in Mississippi. The portion of the retail sale that is attributable to the usage of such truck-tractor or semitrailer in Mississippi is the retail sales price of the truck-tractor or semitrailer multiplied by the percentage of the total miles traveled by the vehicle that are traveled in Mississippi. The tax levied pursuant to this subsection (3) shall be collected by the State Tax Commission from the purchaser of such truck-tractor or semitrailer at the time of registration of such truck-tractor or semitrailer.

(4) From and after July 1, 2001, in lieu of the tax levied in subsection (1) of this section, retail sales of food for human consumption not purchased with food stamps issued by the United States Department of Agriculture, or other federal agency, but which would be exempt under Section 27-65-111(o) from the taxes imposed by this chapter if the food items were purchased with food stamps, shall be taxed at the rate of one and three-tenths percent (1.3%).
SECTION 2. Section 27-65-75, Mississippi Code of 1972, is amended as follows:

27-65-75. On or before the fifteenth day of each month, the revenue collected under the provisions of this chapter during the preceding month shall be paid and distributed as follows:

(1) On or before August 15, 1992, and each succeeding month thereafter through July 15, 1993, eighteen percent (18%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on business activities within a municipal corporation shall be allocated for distribution to such municipality and paid to such municipal corporation. On or before August 15, 1993, and each succeeding month thereafter through July 15, 2001, eighteen and one-half percent (18-1/2%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on business activities within a municipal corporation shall be allocated for distribution to such municipality and paid to such municipal corporation. On or before August 15, 2001, and each succeeding month thereafter, eighteen and one-half percent (18-1/2%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3), 27-65-21 and 27-65-17(4), on business activities within a municipal corporation, and all of the sales tax revenue collected under the provisions of Section 27-65-17(4) on business activities within a municipal corporation, shall be allocated for distribution to such municipality and paid to such municipal corporation.

A municipal corporation, for the purpose of distributing the tax under this subsection, shall mean and include all incorporated cities, towns and villages.
Monies allocated for distribution and credited to a municipal corporation under this subsection may be pledged as security for any loan received by the municipal corporation for the purpose of capital improvements as authorized under Section 57-1-303, or loans as authorized under Section 57-44-7, or water systems improvements as authorized under Section 41-3-16.

In any county having a county seat which is not an incorporated municipality, the distribution provided hereunder shall be made as though the county seat was an incorporated municipality; however, the distribution to such municipality shall be paid to the county treasury wherein the municipality is located and such funds shall be used for road, bridge and street construction or maintenance therein.

(2) On or before September 15, 1987, and each succeeding month thereafter, from the revenue collected under this chapter during the preceding month One Million One Hundred Twenty-five Thousand Dollars ($1,125,000.00) shall be allocated for distribution to municipal corporations as defined under subsection (1) of this section in the proportion that the number of gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in each such municipality during the preceding fiscal year bears to the total gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in municipalities statewide during the preceding fiscal year. The State Tax Commission shall require all distributors of gasoline and diesel fuel to report to the commission monthly the total number of gallons of gasoline and diesel fuel sold by them to consumers and retailers in each municipality during the preceding month. The State Tax Commission shall have the authority to promulgate such rules and regulations as is necessary to determine the number of gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in each municipality. In determining the percentage allocation of funds under this subsection for the
fiscal year beginning July 1, 1987, and ending June 30, 1988, the State Tax Commission may consider gallons of gasoline and diesel fuel sold for a period of less than one (1) fiscal year. For the purposes of this subsection, the term "fiscal year" means the fiscal year beginning July 1 of a year.

(3) On or before September 15, 1987, and on or before the fifteenth day of each succeeding month, until the date specified in Section 65-39-35, the proceeds derived from contractors' taxes levied under Section 27-65-21 on contracts for the construction or reconstruction of highways designated under the Four-Lane Highway Program created under Section 65-3-97 shall, except as otherwise provided in Section 31-17-127, be deposited into the State Treasury to the credit of the State Highway Fund to be used to fund such Four-Lane Highway Program. The Mississippi Department of Transportation shall provide to the State Tax Commission such information as is necessary to determine the amount of proceeds to be distributed under this subsection.

(4) On or before August 15, 1994, and on or before the fifteenth day of each succeeding month through July 15, 1999, from the proceeds of gasoline, diesel fuel or kerosene taxes as provided in Section 27-5-101(a)(ii), Four Million Dollars ($4,000,000.00) shall be deposited in the State Treasury to the credit of a special fund designated as the "State Aid Road Fund," created by Section 65-9-17. On or before August 15, 1999, and on or before the fifteenth day of each succeeding month, from the total amount of the proceeds of gasoline, diesel fuel or kerosene taxes apportioned by Section 27-5-101(a)(ii), Four Million Dollars ($4,000,000.00) or an amount equal to twenty-three and one-fourth percent (23.25%) of such funds, whichever is the greater amount, shall be deposited in the State Treasury to the credit of the "State Aid Road Fund," created by Section 65-9-17. Such funds shall be pledged to pay the principal of and interest on state aid road bonds heretofore issued under Sections 19-9-51
through 19-9-77, in lieu of and in substitution for the funds
heretofore allocated to counties under this section. Such funds
may not be pledged for the payment of any state aid road bonds
issued after April 1, 1981; however, this prohibition against the
pledging of any such funds for the payment of bonds shall not
apply to any bonds for which intent to issue such bonds has been
published, for the first time, as provided by law prior to March
29, 1981. From the amount of taxes paid into the special fund
pursuant to this subsection and subsection (9) of this section,
there shall be first deducted and paid the amount necessary to pay
the expenses of the Office of State Aid Road Construction, as
authorized by the Legislature for all other general and special
fund agencies. The remainder of the fund shall be allocated
monthly to the several counties in accordance with the following
formula:

(a) One-third (1/3) shall be allocated to all counties
in equal shares;

(b) One-third (1/3) shall be allocated to counties
based on the proportion that the total number of rural road miles
in a county bears to the total number of rural road miles in all
counties of the state; and

(c) One-third (1/3) shall be allocated to counties
based on the proportion that the rural population of the county
bears to the total rural population in all counties of the state,
according to the latest federal decennial census.

For the purposes of this subsection, the term "gasoline,
diesel fuel or kerosene taxes" means such taxes as defined in
paragraph (f) of Section 27-5-101.

The amount of funds allocated to any county under this
subsection for any fiscal year after fiscal year 1994 shall not be
less than the amount allocated to such county for fiscal year
1994. Monies allocated to a county from the State Aid Road Fund
for fiscal year 1995 or any fiscal year thereafter that exceed the
amount of funds allocated to that county from the State Aid Road
Fund for fiscal year 1994, first must be expended by the county
for replacement or rehabilitation of bridges on the state aid road
system that have a sufficiency rating of less than twenty-five
(25), according to National Bridge Inspection standards before
such monies may be approved for expenditure by the State Aid Road
Engineer on other projects that qualify for the use of state aid
road funds.

Any reference in the general laws of this state or the
Mississippi Code of 1972 to Section 27-5-105 shall mean and be
construed to refer and apply to subsection (4) of Section
27-65-75.

(5) One Million Six Hundred Sixty-six Thousand Six Hundred
Sixty-six Dollars ($1,666,666.00) each month shall be paid into
the special fund known as the "State Public School Building Fund"
created and existing under the provisions of Sections 37-47-1
through 37-47-67. Such payments into said fund are to be made on
the last day of each succeeding month hereafter.

(6) An amount each month beginning August 15, 1983, through
November 15, 1986, as specified in Section 6 of Chapter 542, Laws
of 1983, shall be paid into the special fund known as the
Correctional Facilities Construction Fund created in Section 6 of
Chapter 542, Laws of 1983.

(7) On or before August 15, 1992, and each succeeding month
thereafter through July 15, 2000, two and two hundred sixty-six
one-thousandths percent (2.266%) of the total sales tax revenue
collected during the preceding month under the provisions of this
chapter, except that collected under the provisions of Section
27-65-17(2) shall be deposited by the commission into the School
Ad Valorem Tax Reduction Fund created pursuant to Section
37-61-35. On or before August 15, 2000, and each succeeding month
thereafter through July 15, 2001, two and two hundred sixty-six
one-thousandths percent (2.266%) of the total sales tax revenue
collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2), shall be deposited into the School Ad Valorem Tax Reduction Fund created under Section 37-61-35 until such time that the total amount deposited into the fund during a fiscal year equals Forty-two Million Dollars ($42,000,000.00). Thereafter, the amounts diverted under this subsection (7) during the fiscal year in excess of Forty-two Million Dollars ($42,000,000.00) shall be deposited into the Education Enhancement Fund created under Section 37-61-33 for appropriation by the Legislature as other education needs and shall not be subject to the percentage appropriation requirements set forth in Section 37-61-33. On or before August 15, 2001, and each succeeding month thereafter, two and five hundred ninety-eight one-thousandths percent (2.598%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2), and except that collected under the provisions of Section 27-65-17(4) on business activities within a municipal corporation, shall be deposited into the School Ad Valorem Tax Reduction Fund created under Section 37-61-35 until such time that the total amount deposited into the fund during a fiscal year equals Forty-two Million Dollars ($42,000,000.00). Thereafter, the amounts diverted under this subsection (7) during the fiscal year in excess of Forty-two Million Dollars ($42,000,000.00) shall be deposited into the Education Enhancement Fund created under Section 37-61-33 for appropriation by the Legislature as other education needs and shall not be subject to the percentage appropriation requirements set forth in Section 37-61-33.

(8) On or before August 15, 1992, and each succeeding month thereafter through July 15, 2001, nine and seventy-three one-thousandths percent (9.073%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2), shall be deposited into the School Ad Valorem Tax Reduction Fund created under Section 37-61-35 until such time that the total amount deposited into the fund during a fiscal year equals Forty-two Million Dollars ($42,000,000.00).
chapter, except that collected under the provisions of Section 27-65-17(2) shall be deposited into the Education Enhancement Fund created pursuant to Section 37-61-33. On or before August 15, 2001, and each succeeding month thereafter, ten and four hundred twenty-six one-thousandths percent (10.426%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2), and except that collected under the provisions of Section 27-65-17(4) on business activities within a municipal corporation, shall be deposited into the Education Enhancement Fund created pursuant to Section 37-61-33.

(9) On or before August 15, 1994, and each succeeding month thereafter, from the revenue collected under this chapter during the preceding month, Two Hundred Fifty Thousand Dollars ($250,000.00) shall be paid into the State Aid Road Fund.

(10) On or before August 15, 1994, and each succeeding month thereafter through August 15, 1995, from the revenue collected under this chapter during the preceding month, Two Million Dollars ($2,000,000.00) shall be deposited into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(11) Notwithstanding any other provision of this section to the contrary, on or before February 15, 1995, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-17(2) and the corresponding levy in Section 27-65-23 on the rental or lease of private carriers of passengers and light carriers of property as defined in Section 27-51-101 shall be deposited, without diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(12) Notwithstanding any other provision of this section to the contrary, on or before August 15, 1995, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-17(1) on
retail sales of private carriers of passengers and light carriers
of property, as defined in Section 27-51-101 and the corresponding
levy in Section 27-65-23 on the rental or lease of these vehicles,
shall be deposited, after diversion, into the Motor Vehicle Ad
Valorem Tax Reduction Fund established in Section 27-51-105.

(13) On or before July 15, 1994, and on or before the
fifteenth day of each succeeding month thereafter, that portion of
the avails of the tax imposed in Section 27-65-22, which is
derived from activities held on the Mississippi state fairgrounds
complex, shall be paid into a special fund hereby created in the
State Treasury and shall be expended pursuant to legislative
appropriations solely to defray the costs of repairs and
renovation at such Trade Mart and Coliseum.

(14) On or before August 15, 1998, and each succeeding month
thereafter through July 15, 2005, that portion of the avails of
the tax imposed in Section 27-65-23 which is derived from sales by
cotton compresses or cotton warehouses and which would otherwise
be paid into the General Fund, shall be deposited in an amount not
to exceed Two Million Dollars ($2,000,000.00) into the special
fund created pursuant to Section 69-37-39.

(15) Notwithstanding any other provision of this section to
the contrary, on or before September 15, 2000, and each succeeding
month thereafter, the sales tax revenue collected during the
preceding month under the provisions of Section 27-65-19(f), shall
be deposited, without diversion, into the Telecommunications Ad

(16) On or before August 15, 2000, and each succeeding month
thereafter, the sales tax revenue collected during the preceding
month under the provisions of this chapter on the gross proceeds
of sales of a project as defined in Section 57-30-1 shall be
deposited, after all diversions except the diversion provided for
in subsection (1) of this section, into the Sales Tax Incentive
Fund created in Section 57-30-3.
(17) The remainder of the amounts collected under the
provisions of this chapter shall be paid into the State Treasury
to the credit of the General Fund.

(18) It shall be the duty of the municipal officials of any
municipality which expands its limits, or of any community which
incorporates as a municipality, to notify the commissioner of such
action thirty (30) days before the effective date. Failure to so
notify the commissioner shall cause such municipality to forfeit
the revenue which it would have been entitled to receive during
this period of time when the commissioner had no knowledge of the
action. If any funds have been erroneously disbursed to any
municipality or any overpayment of tax is recovered by the
taxpayer, the commissioner may make correction and adjust the
error or overpayment with such municipality by withholding the
necessary funds from any subsequent payment to be made to the
municipality.

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