

By: Senator(s) Smith

To: Finance

SENATE BILL NO. 2491

1 AN ACT TO AMEND SECTION 27-65-111, MISSISSIPPI CODE OF 1972,
2 TO EXEMPT FROM SALES TAXATION RETAIL SALES OF CERTAIN FOOD FOR
3 HUMAN CONSUMPTION; TO AMEND SECTION 27-65-75, MISSISSIPPI CODE OF
4 1972, TO INCREASE THE PERCENTAGE AMOUNT OF THE SALES TAX
5 DIVERSIONS TO MUNICIPALITIES, THE SCHOOL AD VALOREM TAX REDUCTION
6 FUND AND THE EDUCATION ENHANCEMENT FUND; AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 27-65-111, Mississippi Code of 1972, is
9 amended as follows:

10 27-65-111. The exemptions from the provisions of this
11 chapter which are not industrial, agricultural or governmental, or
12 which do not relate to utilities or taxes, or which are not
13 properly classified as one of the exemption classifications of
14 this chapter, shall be confined to persons or property exempted by
15 this section or by the Constitution of the United States or the
16 State of Mississippi. No exemptions as now provided by any other
17 section, except the classified exemption sections of this chapter
18 set forth herein, shall be valid as against the tax herein levied.
19 Any subsequent exemption from the tax levied hereunder, except as
20 indicated above, shall be provided by amendments to this section.

21 No exemption provided in this section shall apply to taxes
22 levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972.

23 The tax levied by this chapter shall not apply to the
24 following:

- 25 (a) Sales of tangible personal property and services to
- 26 hospitals or infirmaries owned and operated by a corporation or
- 27 association in which no part of the net earnings inures to the

28 benefit of any private shareholder, group or individual, and which
29 are subject to and governed by Sections 41-7-123 through 41-7-127.

30 Only sales of tangible personal property or services which
31 are ordinary and necessary to the operation of such hospitals and
32 infirmaries are exempted from tax.

33 (b) Sales of daily or weekly newspapers, and
34 periodicals or publications of scientific, literary or educational
35 organizations exempt from federal income taxation under Section
36 501(c)(3) of the Internal Revenue Code of 1954, as it exists as of
37 March 31, 1975, and subscription sales of all magazines.

38 (c) Sales of coffins, caskets and other materials used
39 in the preparation of human bodies for burial.

40 (d) Sales of tangible personal property for immediate
41 export to a foreign country.

42 (e) Sales of tangible personal property to an
43 orphanage, old men's or ladies' home, supported wholly or in part
44 by a religious denomination, fraternal nonprofit organization or
45 other nonprofit organization.

46 (f) Sales of tangible personal property, labor or
47 services taxable under Sections 27-65-17, 27-65-19, and 27-65-23,
48 to a YMCA, YWCA, a Boys' or Girls' Club owned and operated by a
49 corporation or association in which no part of the net earnings
50 inures to the benefit of any private shareholder, group or
51 individual.

52 (g) Sales to elementary and secondary grade schools,
53 junior and senior colleges owned and operated by a corporation or
54 association in which no part of the net earnings inures to the
55 benefit of any private shareholder, group or individual, and which
56 are exempt from state income taxation, provided that this
57 exemption does not apply to sales of property or services which
58 are not to be used in the ordinary operation of the school, or
59 which are to be resold to the students or the public.

60 (h) The gross proceeds of retail sales and the use or
61 consumption in this state of drugs and medicines:

62 (i) Prescribed for the treatment of a human being
63 by a person authorized to prescribe the medicines, and dispensed
64 or prescription filled by a registered pharmacist in accordance
65 with law; or

66 (ii) Furnished by a licensed physician, surgeon,
67 dentist or podiatrist to his own patient for treatment of the
68 patient; or

69 (iii) Furnished by a hospital for treatment of any
70 person pursuant to the order of a licensed physician, surgeon,
71 dentist or podiatrist; or

72 (iv) Sold to a licensed physician, surgeon,
73 podiatrist, dentist or hospital for the treatment of a human
74 being; or

75 (v) Sold to this state or any political
76 subdivision or municipal corporation thereof, for use in the
77 treatment of a human being or furnished for the treatment of a
78 human being by a medical facility or clinic maintained by this
79 state or any political subdivision or municipal corporation
80 thereof.

81 "Medicines," as used in this paragraph (h), shall mean and
82 include any substance or preparation intended for use by external
83 or internal application to the human body in the diagnosis, cure,
84 mitigation, treatment or prevention of disease and which is
85 commonly recognized as a substance or preparation intended for
86 such use; provided that "medicines" do not include any auditory,
87 prosthetic, ophthalmic or ocular device or appliance, any dentures
88 or parts thereof or any artificial limbs or their replacement
89 parts, articles which are in the nature of splints, bandages,
90 pads, compresses, supports, dressings, instruments, apparatus,
91 contrivances, appliances, devices or other mechanical, electronic,
92 optical or physical equipment or article or the component parts

93 and accessories thereof, or any alcoholic beverage or any other
94 drug or medicine not commonly referred to as a prescription drug.

95 Notwithstanding the preceding sentence of this paragraph (h),
96 "medicines" as used in this paragraph (h), shall mean and include
97 sutures, whether or not permanently implanted, bone screws, bone
98 pins, pacemakers and other articles permanently implanted in the
99 human body to assist the functioning of any natural organ, artery,
100 vein or limb and which remain or dissolve in the body.

101 "Hospital," as used in this paragraph (h), shall have the
102 meaning ascribed to it in Section 41-9-3, Mississippi Code of
103 1972.

104 Insulin furnished by a registered pharmacist to a person for
105 treatment of diabetes as directed by a physician shall be deemed
106 to be dispensed on prescription within the meaning of this
107 paragraph (h).

108 (i) Retail sales of automobiles, trucks and
109 truck-tractors if exported from this state within forty-eight (48)
110 hours and registered and first used in another state.

111 (j) Sales of tangible personal property or services to
112 the Salvation Army and the Muscular Dystrophy Association, Inc.

113 (k) From July 1, 1985, through December 31, 1992,
114 retail sales of "alcohol blended fuel" as such term is defined in
115 Section 75-55-5. The gasoline-alcohol blend or the straight
116 alcohol eligible for this exemption shall not contain alcohol
117 distilled outside the State of Mississippi.

118 (l) Sales of tangible personal property or services to
119 the Institute for Technology Development.

120 (m) The gross proceeds of retail sales of food and
121 drink for human consumption made through vending machines serviced
122 by full line vendors from and not connected with other taxable
123 businesses.

124 (n) The gross proceeds of sales of motor fuel.

125 (o) Retail sales of food for human consumption
126 purchased with food stamps issued by the United States Department
127 of Agriculture, or other federal agency, from and after October 1,
128 1987, or from and after the expiration of any waiver granted
129 pursuant to federal law, the effect of which waiver is to permit
130 the collection by the state of tax on such retail sales of food
131 for human consumption purchased with food stamps.

132 (p) Sales of cookies for human consumption by the Girl
133 Scouts of America no part of the net earnings from which sales
134 inures to the benefit of any private group or individual.

135 (q) Gifts or sales of tangible personal property or
136 services to public or private nonprofit museums of art.

137 (r) Sales of tangible personal property or services to
138 alumni associations of state-supported colleges or universities.

139 (s) Sales of tangible personal property or services to
140 chapters of the National Association of Junior Auxiliaries, Inc.

141 (t) Sales of tangible personal property or services to
142 domestic violence shelters which qualify for state funding under
143 Sections 93-21-101 through 93-21-113.

144 (u) Sales of tangible personal property or services to
145 the National Multiple Sclerosis Society, Mississippi Chapter.

146 (v) Retail sales of food for human consumption
147 purchased with food instruments issued the Mississippi Band of
148 Choctaw Indians under the Women, Infants and Children Program
149 (WIC) funded by the United States Department of Agriculture.

150 (w) Sales of tangible personal property or services to
151 a private company, as defined in Section 57-61-5, which is making
152 such purchases with proceeds of bonds issued under Section 57-61-1
153 et seq., the Mississippi Business Investment Act.

154 (x) The gross collections from the operation of
155 self-service, coin-operated car washing equipment and sales of the
156 service of washing motor vehicles with portable high pressure
157 washing equipment on the premises of the customer.

158 (y) Retail sales of food for human consumption not
159 purchased with food stamps issued by the United States Department
160 of Agriculture, or other federal agency, but which would be exempt
161 under paragraph (o) of this section from the taxes imposed by this
162 chapter if the food items were purchased with food stamps.

163 SECTION 2. Section 27-65-75, Mississippi Code of 1972, is
164 amended as follows:

165 27-65-75. On or before the fifteenth day of each month, the
166 revenue collected under the provisions of this chapter during the
167 preceding month shall be paid and distributed as follows:

168 (1) On or before August 15, 1992, and each succeeding month
169 thereafter through July 15, 1993, eighteen percent (18%) of the
170 total sales tax revenue collected during the preceding month under
171 the provisions of this chapter, except that collected under the
172 provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on
173 business activities within a municipal corporation shall be
174 allocated for distribution to such municipality and paid to such
175 municipal corporation. On or before August 15, 1993, and each
176 succeeding month thereafter through July 15, 2001, eighteen and
177 one-half percent (18-1/2%) of the total sales tax revenue
178 collected during the preceding month under the provisions of this
179 chapter, except that collected under the provisions of Sections
180 27-65-15, 27-65-19(3) and 27-65-21, on business activities within
181 a municipal corporation shall be allocated for distribution to
182 such municipality and paid to such municipal corporation. On or
183 before August 15, 2001, and each month thereafter, twenty-one and
184 thirty-five one-hundredths percent (21.35%) of the total sales tax
185 revenue collected during the preceding month under the provisions
186 of this chapter, except that collected under the provisions of
187 Sections 27-65-15, 27-65-19(3) and 27-65-21, on business
188 activities within a municipal corporation shall be allocated for
189 distribution to such municipality and paid to such municipal
190 corporation.

191 A municipal corporation, for the purpose of distributing the
192 tax under this subsection, shall mean and include all incorporated
193 cities, towns and villages.

194 Monies allocated for distribution and credited to a municipal
195 corporation under this subsection may be pledged as security for
196 any loan received by the municipal corporation for the purpose of
197 capital improvements as authorized under Section 57-1-303, or
198 loans as authorized under Section 57-44-7, or water systems
199 improvements as authorized under Section 41-3-16.

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

207 (2) On or before September 15, 1987, and each succeeding
208 month thereafter, from the revenue collected under this chapter
209 during the preceding month One Million One Hundred Twenty-five
210 Thousand Dollars (\$1,125,000.00) shall be allocated for
211 distribution to municipal corporations as defined under subsection
212 (1) of this section in the proportion that the number of gallons
213 of gasoline and diesel fuel sold by distributors to consumers and
214 retailers in each such municipality during the preceding fiscal
215 year bears to the total gallons of gasoline and diesel fuel sold
216 by distributors to consumers and retailers in municipalities
217 statewide during the preceding fiscal year. The State Tax
218 Commission shall require all distributors of gasoline and diesel
219 fuel to report to the commission monthly the total number of
220 gallons of gasoline and diesel fuel sold by them to consumers and
221 retailers in each municipality during the preceding month. The
222 State Tax Commission shall have the authority to promulgate such
223 rules and regulations as is necessary to determine the number of

224 gallons of gasoline and diesel fuel sold by distributors to
225 consumers and retailers in each municipality. In determining the
226 percentage allocation of funds under this subsection for the
227 fiscal year beginning July 1, 1987, and ending June 30, 1988, the
228 State Tax Commission may consider gallons of gasoline and diesel
229 fuel sold for a period of less than one (1) fiscal year. For the
230 purposes of this subsection, the term "fiscal year" means the
231 fiscal year beginning July 1 of a year.

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

244 (4) On or before August 15, 1994, and on or before the
245 fifteenth day of each succeeding month through July 15, 1999, from
246 the proceeds of gasoline, diesel fuel or kerosene taxes as
247 provided in Section 27-5-101(a)(ii)1, Four Million Dollars
248 (\$4,000,000.00) shall be deposited in the State Treasury to the
249 credit of a special fund designated as the "State Aid Road Fund,"
250 created by Section 65-9-17. On or before August 15, 1999, and on
251 or before the fifteenth day of each succeeding month, from the
252 total amount of the proceeds of gasoline, diesel fuel or kerosene
253 taxes apportioned by Section 27-5-101(a)(ii)1, Four Million
254 Dollars (\$4,000,000.00) or an amount equal to twenty-three and
255 one-fourth percent (23.25%) of such funds, whichever is the
256 greater amount, shall be deposited in the State Treasury to the

257 credit of the "State Aid Road Fund," created by Section 65-9-17.
258 Such funds shall be pledged to pay the principal of and interest
259 on state aid road bonds heretofore issued under Sections 19-9-51
260 through 19-9-77, in lieu of and in substitution for the funds
261 heretofore allocated to counties under this section. Such funds
262 may not be pledged for the payment of any state aid road bonds
263 issued after April 1, 1981; however, this prohibition against the
264 pledging of any such funds for the payment of bonds shall not
265 apply to any bonds for which intent to issue such bonds has been
266 published, for the first time, as provided by law prior to March
267 29, 1981. From the amount of taxes paid into the special fund
268 pursuant to this subsection and subsection (9) of this section,
269 there shall be first deducted and paid the amount necessary to pay
270 the expenses of the Office of State Aid Road Construction, as
271 authorized by the Legislature for all other general and special
272 fund agencies. The remainder of the fund shall be allocated
273 monthly to the several counties in accordance with the following
274 formula:

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

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

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

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

288 The amount of funds allocated to any county under this
289 subsection for any fiscal year after fiscal year 1994 shall not be

290 less than the amount allocated to such county for fiscal year
291 1994. Monies allocated to a county from the State Aid Road Fund
292 for fiscal year 1995 or any fiscal year thereafter that exceed the
293 amount of funds allocated to that county from the State Aid Road
294 Fund for fiscal year 1994, first must be expended by the county
295 for replacement or rehabilitation of bridges on the state aid road
296 system that have a sufficiency rating of less than twenty-five
297 (25), according to National Bridge Inspection standards before
298 such monies may be approved for expenditure by the State Aid Road
299 Engineer on other projects that qualify for the use of state aid
300 road funds.

301 Any reference in the general laws of this state or the
302 Mississippi Code of 1972 to Section 27-5-105 shall mean and be
303 construed to refer and apply to subsection (4) of Section
304 27-65-75.

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

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

316 (7) (a) On or before August 15, 1992, and each succeeding
317 month thereafter through July 15, 2000, two and two hundred
318 sixty-six one-thousandths percent (2.266%) of the total sales tax
319 revenue collected during the preceding month under the provisions
320 of this chapter, except that collected under the provisions of
321 Section 27-65-17(2) shall be deposited by the commission into the

322 School Ad Valorem Tax Reduction Fund created pursuant to Section
323 37-61-35.

324 **(b)** On or before August 15, 2000, and each succeeding
325 month thereafter through July 15, 2001, two and two hundred
326 sixty-six one-thousandths percent (2.266%) of the total sales tax
327 revenue collected during the preceding month under the provisions
328 of this chapter, except that collected under the provisions of
329 Section 27-65-17(2), shall be deposited into the School Ad Valorem
330 Tax Reduction Fund created under Section 37-61-35 until such time
331 that the total amount deposited into the fund during a fiscal year
332 equals Forty-two Million Dollars (\$42,000,000.00). Thereafter,
333 the amounts diverted under this subsection (7) during the fiscal
334 year in excess of Forty-two Million Dollars (\$42,000,000.00) shall
335 be deposited into the Education Enhancement Fund created under
336 Section 37-61-33 for appropriation by the Legislature as other
337 education needs and shall not be subject to the percentage
338 appropriation requirements set forth in Section 37-61-33.

339 **(c)** On or before August 15, 2000, and each succeeding
340 month thereafter, two and six hundred fifteen one-thousandths
341 percent (2.615%) of the total sales tax revenue collected during
342 the preceding month under the provisions of this chapter, except
343 that collected under the provisions of Section 27-65-17(2) shall
344 be deposited by the commission into the School Ad Valorem Tax
345 Reduction Fund created pursuant to Section 37-61-35 until such
346 time that the total amount deposited into the fund during a fiscal
347 year equals Forty-two Million Dollars (\$42,000,000.00).
348 Thereafter, the amounts diverted under this subsection (7) during
349 the fiscal year in excess of Forty-two Million Dollars
350 (\$42,000,000.00) shall be deposited into the Education Enhancement
351 Fund created under Section 37-61-33 for appropriation by the
352 Legislature as other education needs and shall not be subject to
353 the percentage appropriation requirements set forth in Section
354 37-61-33.

355 (8) (a) On or before August 15, 1992, and each succeeding
356 month thereafter through July 15, 2001, nine and seventy-three
357 one-thousandths percent (9.073%) of the total sales tax revenue
358 collected during the preceding month under the provisions of this
359 chapter, except that collected under the provisions of Section
360 27-65-17(2) shall be deposited into the Education Enhancement Fund
361 created pursuant to Section 37-61-33.

362 (b) On or before August 15, 2000, and each succeeding
363 month thereafter, ten and four hundred seventy one-thousandths
364 percent (10.470%) of the total sales tax revenue collected during
365 the preceding month under the provisions of this chapter, except
366 that collected under the provisions of Section 27-65-17(2) shall
367 be deposited into the Education Enhancement Fund created pursuant
368 to Section 37-61-33.

369 (9) On or before August 15, 1994, and each succeeding month
370 thereafter, from the revenue collected under this chapter during
371 the preceding month, Two Hundred Fifty Thousand Dollars
372 (\$250,000.00) shall be paid into the State Aid Road Fund.

373 (10) On or before August 15, 1994, and each succeeding month
374 thereafter through August 15, 1995, from the revenue collected
375 under this chapter during the preceding month, Two Million Dollars
376 (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad
377 Valorem Tax Reduction Fund established in Section 27-51-105.

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

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

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

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

411 (15) Notwithstanding any other provision of this section to
412 the contrary, on or before September 15, 2000, and each succeeding
413 month thereafter, the sales tax revenue collected during the
414 preceding month under the provisions of Section 27-65-19(f), shall
415 be deposited, without diversion, into the Telecommunications Ad
416 Valorem Tax Reduction Fund established in Section 27-38-7.

417 (16) On or before August 15, 2000, and each succeeding month
418 thereafter, the sales tax revenue collected during the preceding
419 month under the provisions of this chapter on the gross proceeds

420 of sales of a project as defined in Section 57-30-1 shall be
421 deposited, after all diversions except the diversion provided for
422 in subsection (1) of this section, into the Sales Tax Incentive
423 Fund created in Section 57-30-3.

424 (17) The remainder of the amounts collected under the
425 provisions of this chapter shall be paid into the State Treasury
426 to the credit of the General Fund.

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

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