To: Finance

MISSISSIPPI LEGISLATURE                        REGULAR SESSION 2001
By: Senator(s) Tollison

SENATE BILL NO. 2812
(As Passed the Senate)

AN ACT TO AMEND SECTION 27-69-3, MISSISSIPPI CODE OF 1972, TO
REVISE THE DEFINITION OF WHOLESALER IN THE TOBACCO TAX LAWS; TO
AMEND SECTION 27-69-5, MISSISSIPPI CODE OF 1972, TO PROVIDE A
RESIDENCY REQUIREMENT FOR A WHOLESALE TOBACCO SALES PERMIT; AND
FOR RELATED PURPOSES.

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

SECTION 1. Section 27-69-3, Mississippi Code of 1972, is
amended as follows:

[Until July 1, 2001, this section shall read as follows:]

27-69-3. When used in this chapter:

(a) The word "state" shall mean the State of
Mississippi as geographically defined, and any and all waters
under the jurisdiction of the State of Mississippi.

(b) The words "State Auditor" shall mean the Auditor of
Public Accounts of the State of Mississippi, or his legally
appointed deputy, clerk or agent.

(c) The word "commissioner" shall mean the Chairman of
the State Tax Commission of the State of Mississippi, and his
authorized agents and employees.

(d) The word "person" shall mean any individual,
company, corporation, partnership, association, joint venture,
estate, trust, or any other group, or combination acting as a
unit, and the plural as well as the singular, unless the intention
to give a more limited meaning is disclosed by the context.

(e) The word "consumer" shall mean a person who comes
into possession of tobacco for the purpose of consuming it, giving
it away, or disposing of it in any way by sale, barter or
exchange.
(f) The word "tobacco" shall mean any cigarettes, cigars, cheroots, stogies, smoking tobacco (including granulated, plug cut, crimp cut, ready rubbed, and other kinds and forms of tobacco, or substitutes therefor, prepared in such manner as to be suitable for smoking in a pipe or cigarette) and including plug and twist chewing tobacco and snuff, when such "tobacco" is manufactured and prepared for sale or personal consumption. All words used herein shall be given the meaning as defined in the regulations of the Treasury Department of the United States of America.

(g) The words "first sale" shall mean and include the first sale, or distribution of such tobacco in intrastate commerce, or the first use or consumption of such tobacco within this state.

(h) The words "drop shipment" shall mean and include any delivery of tobacco received by any person within this state, when payment for such tobacco is made to the shipper, or seller by or through a person other than a consignee.

(i) The word "distributor" shall include every person, except retailers as defined herein, in the state who manufactures or produces tobacco or who ships, transports, or imports into this state, or in any manner acquires or possesses tobacco, and makes a first sale of the same in the state.

(j) The word "wholesaler" shall include dealers, whose principal business is that of a wholesale dealer or jobber, who is known to the retail trade as such, and whose place of business is located in Mississippi or in a state which affords reciprocity to wholesalers domiciled in Mississippi, who shall sell any taxable tobacco to retail dealers only for the purpose of resale, and who have tobacco sales to retail stores other than their own or their subsidiaries in Mississippi that exceed fifty percent (50%) of their total tobacco sales.
(k) The word "retailer" shall include every person, other than a wholesale dealer, as defined above, whose principal business is that of selling merchandise at retail, who shall sell, or offer for sale tobacco to the consumer. The sale of tobacco in quantity lots by retailers to other retailers, transient vendors, or other persons, shall not be construed as wholesale and shall not qualify such retailer for a permit as a wholesaler.

(l) The word "dealer" shall include every person, firm, corporation or association of persons, except retailers as defined herein, who manufacture tobacco for distribution, for sale, for use or for consumption in the State of Mississippi.

The word "dealer" is further defined to mean any person, firm, corporation or association of persons, except retailers as defined herein, who imports tobacco from any state or foreign country for distribution, sale, use, or consumption in the State of Mississippi.

(m) The words "distributing agent" shall include every person in the state who acts as an agent of any person outside the State of Mississippi, by receiving tobacco in interstate commerce, and storing such tobacco in this state subject to distribution, or delivery upon order from said person outside the state to distributors, wholesalers, retailers and dealers.

(n) The words "transient vendor" shall mean and include every person commonly and generally termed "peddlers" and every person acting for himself, or as an agent, employee, salesman, or in any capacity for another, whether as owner, bailee, or other custodian of tobacco, and going from person to person, dealer to dealer, house to house, or place to place, and selling or offering for sale at retail or wholesale tobacco, and every person who does not keep a regular place of business open at all times in regular hours, and every person who goes from person to person, dealer to dealer, house to house, or place to place, and sells or offers for sale tobacco which he carries with him, and who delivers the same
at the time of, or immediately after the sale, or without
returning to the place of business operations (a permanent place
of business within the state) between the taking of the order and
the delivery of the tobacco, or

All persons who go from person to person, house to house,
place to place, or dealer to dealer, soliciting orders by
exhibiting samples, or taking orders, and thereafter making
delivery of tobacco, or filling the order without carrying or
sending the order to the permanent place of business, and
thereafter making delivery of the tobacco pursuant to the terms of
the order, or

All persons who go from person to person, place to place,
house to house, or dealer to dealer, carrying samples and selling
tobacco from samples, and afterwards making delivery without
taking and sending an order therefor to a permanent place of
business for the filling of the order, and delivery of the
tobacco, or the exchange of tobacco having become damaged or
unsalable, or the purchase by tobacco of advertising space, or

All persons who have in their possession, or under their
control, any tobacco offered, or to be offered for sale or to be
delivered, unless the sale or delivery thereof is to be made in
pursuance of a bona fide order for the tobacco, to be sold or
delivered, said order to be evidenced by an invoice or memorandum.

(o) The words "contraband tobacco" shall mean all
tobacco found in the possession of any person whose permit to
engage in dealing in tobacco has been revoked by the commissioner;
and any cigarettes found in the possession of any person to which
the proper tax stamps have not been affixed; and any cigarettes
improperly stamped when found in the possession of any person; and
all other tobacco upon which the excise tax has not been paid.

(p) The word "sale" means an exchange for money or
goods, giving away, or distributing any tobacco as defined in this
chapter.
(q) The words "forty-eight (48) hours" and "seventy-two (72) hours" shall mean two (2) calendar days and three (3) calendar days, respectively, excluding Sundays and legal holidays.

(r) The word "stamp" or "stamping," or the import of such word, when used in this chapter, shall mean any manner of stamp or impression permitted by the commissioner that carries out the purposes of the chapter in clearly indicating upon the packages of cigarettes taxed the due payment of the tax.

(s) "Manufacturer's list price" shall mean the full sales price at which tobacco is sold or offered for sale by a manufacturer to the wholesaler or distributor in this state without any deduction for freight, trade discount, cash discounts, special discounts or deals, cash rebates, or any other reduction from the regular selling price. In the event freight charges on shipments to wholesalers or distributors are not paid by the manufacturer, then such freight charges required to be paid by the wholesalers and distributors shall be added to the amount paid to the manufacturer in order to determine "manufacturer's list price." In the case of a wholesaler or distributor whose place of business is located outside this state, the "manufacturer's list price" for tobacco sold in this state by such wholesaler or distributor shall in all cases be considered to be the same as that of a wholesaler or distributor located within this state.

[From and after July 1, 2001, this section shall read as follows:]

27-69-3. When used in this chapter:

(a) "State" means the State of Mississippi as geographically defined, and any and all waters under the jurisdiction of the State of Mississippi.

(b) "State Auditor" means the Auditor of Public Accounts of the State of Mississippi, or his legally appointed deputy, clerk or agent.
(c) "Commissioner" means the Chairman of the State Tax Commission of the State of Mississippi, and his authorized agents and employees.

(d) "Person" means any individual, company, corporation, partnership, association, joint venture, estate, trust, or any other group, or combination acting as a unit, and the plural as well as the singular, unless the intention to give a more limited meaning is disclosed by the context.

(e) "Consumer" means a person who comes into possession of tobacco for the purpose of consuming it, giving it away, or disposing of it in any way by sale, barter or exchange.

(f) "Tobacco" means any cigarettes, cigars, cheroots, stogies, smoking tobacco (including granulated, plug cut, crimp cut, ready rubbed, and other kinds and forms of tobacco, or substitutes therefor, prepared in such manner as to be suitable for smoking in a pipe or cigarette) and including plug and twist chewing tobacco and snuff, when such "tobacco" is manufactured and prepared for sale or personal consumption. All words used herein shall be given the meaning as defined in the regulations of the Treasury Department of the United States of America.

(g) "First sale" means and includes the first sale, or distribution of such tobacco in intrastate commerce, or the first use or consumption of such tobacco within this state.

(h) "Drop shipment" means and includes any delivery of tobacco received by any person within this state, when payment for such tobacco is made to the shipper, or seller by or through a person other than a consignee.

(i) "Distributor" includes every person, except retailers as defined herein, in the state who manufactures or produces tobacco or who ships, transports, or imports into this state, or in any manner acquires or possesses tobacco, and makes a first sale of the same in the state.
(j) "Wholesaler" includes dealers, whose principal business is that of a wholesale dealer or jobber, who is known to the retail trade as such, and whose place of business is located in Mississippi or in a state which affords reciprocity to wholesalers domiciled in Mississippi, who shall sell any taxable tobacco to retail dealers only for the purpose of resale, and who have tobacco sales to retail stores other than their own or their subsidiaries in Mississippi that exceed fifty percent (.0%) of their total tobacco sales.

(k) "Retailer" includes every person, other than a wholesale dealer, as defined above, whose principal business is that of selling merchandise at retail, who shall sell, or offer for sale tobacco to the consumer. The sale of tobacco in quantity lots by retailers to other retailers, transient vendors, or other persons, shall not be construed as wholesale and shall not qualify such retailer for a permit as a wholesaler.

(l) "Dealer" includes every person, firm, corporation or association of persons, except retailers as defined herein, who manufacture tobacco for distribution, for sale, for use or for consumption in the State of Mississippi. The word "dealer" is further defined to mean any person, firm, corporation or association of persons, except retailers as defined herein, who imports tobacco from any state or foreign country for distribution, sale, use, or consumption in the State of Mississippi.

(m) "Distributing agent" includes every person in the state who acts as an agent of any person outside the State of Mississippi, by receiving tobacco in interstate commerce, and storing such tobacco in this state subject to distribution, or delivery upon order from said person outside the state to distributors, wholesalers, retailers and dealers.

(n) "Transient vendor" means and includes every person commonly and generally termed "peddlers" and every person acting
for himself, or as an agent, employee, salesman, or in any capacity for another, whether as owner, bailee, or other custodian of tobacco, and going from person to person, dealer to dealer, house to house, or place to place, and selling or offering for sale at retail or wholesale tobacco, and every person who does not keep a regular place of business open at all times in regular hours, and every person who goes from person to person, dealer to dealer, house to house, or place to place, and sells or offers for sale tobacco which he carries with him, and who delivers the same at the time of, or immediately after the sale, or without returning to the place of business operations (a permanent place of business within the state) between the taking of the order and the delivery of the tobacco, or

All persons who go from person to person, house to house, place to place, or dealer to dealer, soliciting orders by exhibiting samples, or taking orders, and thereafter making delivery of tobacco, or filling the order without carrying or sending the order to the permanent place of business, and thereafter making delivery of the tobacco pursuant to the terms of the order, or

All persons who go from person to person, house to house, place to place, or dealer to dealer, carrying samples and selling tobacco from samples, and afterwards making delivery without taking and sending an order therefor to a permanent place of business for the filling of the order, and delivery of the tobacco, or the exchange of tobacco having become damaged or unsalable, or the purchase by tobacco of advertising space, or

All persons who have in their possession, or under their control, any tobacco offered, or to be offered for sale or to be delivered, unless the sale or delivery thereof is to be made in pursuance of a bona fide order for the tobacco, to be sold or delivered, said order to be evidenced by an invoice or memorandum.
(o) "Contraband tobacco" means all tobacco found in the possession of any person whose permit to engage in dealing in tobacco has been revoked by the commissioner; and any cigarettes found in the possession of any person to which the proper tax stamps have not been affixed; and any cigarettes improperly stamped when found in the possession of any person; and all other tobacco upon which the excise tax has not been paid.

(p) "Sale" means an exchange for money or goods, giving away, or distributing any tobacco as defined in this chapter.

(q) "Forty-eight (48) hours" and "seventy-two (72) hours" means two (2) calendar days and three (3) calendar days, respectively, excluding Sundays and legal holidays.

(r) "Stamp" or "stamping," or the import of such word, when used in this chapter, means any manner of stamp or impression permitted by the commissioner that carries out the purposes of the chapter in clearly indicating upon the packages of cigarettes taxed the due payment of the tax and clearly identifying, by serial number or otherwise, the permittee who affixed the stamp to the particular package.

(s) "Manufacturer's list price" means the full sales price at which tobacco is sold or offered for sale by a manufacturer to the wholesaler or distributor in this state without any deduction for freight, trade discount, cash discounts, special discounts or deals, cash rebates, or any other reduction from the regular selling price. In the event freight charges on shipments to wholesalers or distributors are not paid by the manufacturer, then such freight charges required to be paid by the wholesalers and distributors shall be added to the amount paid to the manufacturer in order to determine "manufacturer's list price." In the case of a wholesaler or distributor whose place of business is located outside this state, the "manufacturer's list price" for tobacco sold in this state by such wholesaler or
distributor shall in all cases be considered to be the same as
that of a wholesaler or distributor located within this state.

SECTION 2. Section 27-69-5, Mississippi Code of 1972, is
amended as follows:

27-69-5. Every distributor, wholesaler, dealer or retailer
who desires to become engaged in the sale or use of tobacco upon
which a tax is required to be paid shall file with the
commissioner an application for a permit to engage in such
business. The application for a permit shall be filed on blanks
to be furnished by the commissioner for that purpose. The
application must be subscribed and sworn to by the person owning
the business, or having an ownership interest therein. If the
applicant is a corporation, a duly authorized agent shall execute
the application. The application shall show the name of such
person, and in case of partnership, the name of each partner
thereof, the person's post office address, the location of the
place of business to which the permit shall apply, and the nature
of the business in which engaged, and any other information the
commissioner may require. No distributor, wholesaler, dealer or
retailer shall sell any tobacco until such application has been
filed, the prescribed permit fee paid, and the permit obtained.
Except as otherwise provided in this paragraph, said permit shall
expire on January 31 of each year. However, a retail permit shall
continue in force during the time that the permit holder to whom
it is issued continues in the same business at the same location
unless such permit is revoked by the commissioner for cause or is
revoked pursuant to any provision of the Mississippi Juvenile
Tobacco Access Prevention Act in Sections 97-32-1 through
97-32-23.

An application shall be filed, and a permit obtained for each
place of business owned or operated by each distributor,
wholesaler, dealer or retailer.
Upon receipt of the application and any permit fee hereinafter provided for, the commissioner may issue to every distributor, wholesaler, dealer or retailer, for the place of business designated, a nonassignable permit, authorizing the sale or use of tobacco in the state. Said permit shall provide that the same is revocable, and may be forfeited or suspended upon violation of any provision of this chapter, the Mississippi Tobacco Youth Access Prevention Act of 1997 or any rule or regulation adopted by the commissioner. If such permit is revoked or suspended, said distributor, wholesaler, dealer or retailer shall not sell any tobacco from such place of business until a new permit is granted, or the suspension of the old permit removed.

A permit cannot be transferred from one person to another, and the permit shall at all times be publicly displayed by the distributor, wholesaler, dealer or retailer in his place of business so as to be seen easily by the public. A permit may be refused to any person previously convicted of violations of this chapter.

No wholesale permit shall be granted to an applicant that has not been a resident of the State of Mississippi for at least two (2) years.

SECTION 3. This act shall take effect and be in force from and after its passage.