

By: Senator(s) Blackmon

To: Finance

SENATE BILL NO. 3038

1 AN ACT TO AMEND SECTION 27-65-3, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE THAT FINANCE CHARGES AND CARRYING CHARGES SHALL NOT BE
 3 INCLUDED WITHIN THE MEANING OF GROSS PROCEEDS OF SALES FOR
 4 PURPOSES OF THE STATE SALES TAX LAW; TO AMEND SECTION 27-65-21,
 5 MISSISSIPPI CODE OF 1972, TO REMOVE FINANCE CHARGES AND LATE
 6 CHARGES FROM THE MEANING OF COMPENSATION FOR PURPOSES OF THE
 7 CONTRACTING SALES TAX; AND FOR RELATED PURPOSES.

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

9 SECTION 1. Section 27-65-3, Mississippi Code of 1972, is
 10 amended as follows:

11 27-65-3. The words, terms and phrases, when used in this
 12 chapter, shall have the meanings ascribed to them herein.

13 (a) "Tax Commission" means the State Tax Commission of
 14 the State of Mississippi.

15 (b) "Commissioner" means the Chairman of the State Tax
 16 Commission.

17 (c) "Person" means * * * any individual, firm,
 18 copartnership, joint venture, association, corporation, estate,
 19 trust or other group or combination acting as a unit, and includes
 20 the plural as well as the singular in number. "Person" shall
 21 include husband or wife or both where joint benefits are derived
 22 from the operation of a business taxed hereunder. "Person" shall
 23 also include any state, county, municipal or other agency or
 24 association engaging in a business taxable under this chapter.

25 (d) "Tax year" or "taxable year" means either the
 26 calendar year or the taxpayer's fiscal year.

27 (e) "Taxpayer" means any person liable for or having
28 paid any tax to the State of Mississippi under the provisions of
29 this chapter.

30 (f) "Sale" or "sales" includes the barter or exchange
31 of property as well as the sale thereof for money or other
32 consideration, and every closed transaction by which the title to
33 taxable property passes shall constitute a taxable event.

34 "Sale" shall also include the passing of title to property
35 for a consideration of coupons, trading stamps or by any other
36 means when redemption is subsequent to the original sale by which
37 the coupon, stamp or other obligation was created.

38 The situs of a sale for the purpose of distributing taxes to
39 municipalities shall be the same as the location of the business
40 from which the sale is made except that:

41 (i) Retail sales along a route from a vehicle or
42 otherwise by a transient vendor shall take the situs of delivery
43 to the customer.

44 (ii) The situs of wholesale sales of tangible
45 personal property taxed at wholesale rates, the amount of which is
46 allowed as a credit against the sales tax liability of the
47 retailer, shall be the same as the location of the business of the
48 retailer receiving the credit.

49 (iii) The situs of wholesale sales of tangible
50 personal property taxed at wholesale rates, the amount of which is
51 not allowed as a credit against the sales tax liability of the
52 retailer, shall have a rural situs.

53 (iv) Income received from the renting or leasing
54 of property used for transportation purposes between cities or
55 counties shall have a rural situs.

56 (g) "Delivery charges" means * * * any expenses
57 incurred by a seller in acquiring merchandise for sale in the
58 regular course of business commonly known as "freight-in" or
59 "transportation costs-in." "Delivery charges" also include any

60 charges made by the seller for delivery of property sold to the
61 purchaser.

62 (h) "Gross proceeds of sales" means the value
63 proceeding or accruing from the full sale price of tangible
64 personal property, including installation charges, * * * without
65 any deduction for delivery charges, cost of property sold, other
66 expenses or losses, or taxes of any kind except those expressly
67 exempt by this chapter.

68 Where a trade-in is taken as part payment on tangible
69 personal property sold, "gross proceeds of sales" shall include
70 only the difference received between the selling price of the
71 tangible personal property and the amount allowed for a trade-in
72 of property of the same kind. When the trade-in is subsequently
73 sold, the selling price thereof shall be included in "gross
74 proceeds of sales."

75 "Gross proceeds of sales" includes the value of any goods,
76 wares, merchandise or property purchased at wholesale or
77 manufactured, and any mineral or natural resources produced which
78 are excluded from the tax levied by Section 27-65-15, which are
79 withdrawn or used from an established business or from the stock
80 in trade for consumption or any other use in the business or by
81 the owner.

82 "Gross proceeds of sales" shall not include bad check or
83 draft service charges as provided for in Section 97-19-57.

84 "Gross proceeds of sales" does not include finance charges,
85 carrying charges or any other addition to the selling price as a
86 result of deferred payments by the purchaser.

87 (i) "Gross income" means the total charges for service
88 or the total receipts (actual or accrued) derived from trades,
89 business or commerce by reason of the investment of capital in the
90 business engaged in, including the sale or rental of tangible
91 personal property, compensation for labor and services performed,
92 and including the receipts from the sales of property retained as

93 toll, without any deduction for rebates, cost of property sold,
94 cost of materials used, labor costs, interest paid, losses or any
95 expense whatever.

96 "Gross income" shall also include the cost of property given
97 as compensation when said property is consumed by a person
98 performing a taxable service for the donor.

99 However, "gross income" or "gross proceeds of sales" shall
100 not be construed to include the value of goods returned by
101 customers when the total sale price is refunded either in cash or
102 by credit, or cash discounts allowed and taken on sales. Cash
103 discounts shall not include the value of trading stamps given with
104 a sale of property.

105 (j) "Tangible personal property" means personal
106 property perceptible to the human senses or by chemical analysis
107 as opposed to real property or intangibles and shall include
108 property sold on an installed basis which may become a part of
109 real or personal property.

110 (k) "Installation charges" means * * * the charge for
111 the application of tangible personal property to real or personal
112 property without regard to whether or not it becomes a part of the
113 real property or retains its personal property classification. It
114 shall include, but not be limited to, sales in place of roofing,
115 tile, glass, carpets, drapes, fences, awnings, window air
116 conditioning units, gasoline pumps, window guards, floor
117 coverings, carports, store fixtures, aluminum and plastic siding,
118 tombstones and similar personal property.

119 (l) "Newspaper" means a periodical which:

120 (i) Is not published primarily for advertising
121 purposes and has not contained more than seventy-five percent
122 (75%) advertising in more than one-half (1/2) of its issues during
123 any consecutive twelve-month period excluding separate advertising
124 supplements inserted into but separately identifiable from any
125 regular issue or issues;

126 (ii) Has been established and published
127 continuously for at least twelve (12) months;
128 (iii) Is regularly issued at stated intervals no
129 less frequently than once a week, bears a date of issue, and is
130 numbered consecutively; provided, however, that publication on
131 legal holidays of this state or of the United States and on
132 Saturdays and Sundays shall not be required, and failure to
133 publish not more than two (2) regular issues in any calendar year
134 shall not exclude a periodical from this definition;
135 (iv) Is issued from a known office of publication,
136 which shall be the principal public business office of the
137 newspaper and need not be the place at which the periodical is
138 printed and a newspaper shall be deemed to be "published" at the
139 place where its known office of publication is located;
140 (v) Is formed of printed sheets; provided,
141 however, that a periodical that is reproduced by the stencil,
142 mimeograph or hectograph process shall not be considered to be a
143 "newspaper"; and
144 (vi) Is originated and published for the
145 dissemination of current news and intelligence of varied, broad
146 and general public interest, announcements and notices, opinions
147 as editorials on a regular or irregular basis, and advertising and
148 miscellaneous reading matter.

149 The term "newspaper" shall include periodicals which are
150 designed primarily for free circulation or for circulation at
151 nominal rates as well as those which are designed for circulation
152 at more than a nominal rate.

153 The term "newspaper" shall not include a publication or
154 periodical which is published, sponsored by, is directly supported
155 financially by, or is published to further the interests of, or is
156 directed to, or has a circulation restricted in whole or in part
157 to any particular sect, denomination, labor or fraternal
158 organization or other special group or class or citizens.

159 For purposes of this paragraph, a periodical designed
160 primarily for free circulation or circulation at nominal rates
161 shall not be considered to be a newspaper unless such periodical
162 has made an application for such status to the Tax Commission in
163 the manner prescribed by the commission and has provided to the
164 Tax Commission documentation satisfactory to the commission
165 showing that such periodical meets the requirements of the
166 definition of the term "newspaper." However, if such periodical
167 has been determined to be a newspaper under action taken by the
168 State Tax Commission on or before April 11, 1996, such periodical
169 shall be considered to be a newspaper without the necessity of
170 applying for such status. A determination by the State Tax
171 Commission that a publication is a newspaper shall be limited to
172 the application of this chapter and shall not establish that the
173 publication is a newspaper for any other purpose.

174 SECTION 2. Section 27-65-21, Mississippi Code of 1972, is
175 amended as follows:

176 27-65-21. (1) (a) (i) Upon every person engaging or
177 continuing in this state in the business of contracting or
178 performing a contract or engaging in any of the activities, or
179 similar activities, listed below for a price, commission, fee or
180 wage, there is hereby levied, assessed and shall be collected a
181 tax equal to three and one-half percent (3-1/2%) of the total
182 contract price or compensation received * * * from constructing,
183 building, erecting, repairing, grading, excavating, drilling,
184 exploring, testing or adding to any building, highway, street,
185 sidewalk, bridge, culvert, sewer, irrigation or water system,
186 drainage or dredging system, levee or levee system or any part
187 thereof, railway, reservoir, dam, power plant, electrical system,
188 air conditioning system, heating system, transmission line,
189 pipeline, tower, dock, storage tank, wharf, excavation, grading,
190 water well, any other improvement or structure or any part thereof
191 when the compensation received exceeds Ten Thousand Dollars

192 (\$10,000.00). Such activities shall not include constructing,
193 repairing or adding to property which retains its identity as
194 personal property. The tax imposed in this section is levied upon
195 the prime contractor and shall be paid by him.

196 (ii) Amounts included in the contract price or
197 compensation received representing the sale of manufacturing or
198 processing machinery for a manufacturer or custom processor shall
199 be taxed at the rate of one and one-half percent (1-1/2%) in lieu
200 of the three and one-half percent (3-1/2%).

201 (b) The following shall be excluded from the tax levied
202 by this section:

203 (i) The contract price or compensation received
204 for constructing, building, erecting, repairing or adding to any
205 building, electrical system, air conditioning system, heating
206 system or any other improvement or structure which is used for or
207 primarily in connection with a residence or dwelling place for
208 human beings. Such residences shall include homes, apartment
209 buildings, condominiums, mobile homes, summer cottages, fishing
210 and hunting camp buildings and similar buildings, but shall not
211 include hotels, motels, hospitals, nursing or retirement homes,
212 tourist cottages or other commercial establishments.

213 (ii) The portion of the total contract price
214 attributable to design or engineering services if the total
215 contract price for the project exceeds the sum of One Hundred
216 Million Dollars (\$100,000,000.00).

217 (iii) The contract price or compensation received
218 to restore, repair or replace a utility distribution or
219 transmission system that has been damaged due to ice storm,
220 hurricane, flood, tornado, wind, earthquake or other natural
221 disaster if such restoration, repair or replacement is performed
222 by the entity providing the service at its cost.

223 (c) Sales of materials and services for use in the
224 activities hereby excluded from taxes imposed by this section,

225 except services used in activities excluded pursuant to paragraph
226 (b)(iii) of this subsection, shall be subject to taxes imposed by
227 other sections in this chapter.

228 (2) Upon every person engaging or continuing in this state
229 in the business of contracting or performing a contract of
230 redrilling, or working over, or of drilling an oil well or a gas
231 well, regardless of whether such well is productive or
232 nonproductive, for any valuable consideration, there is hereby
233 levied, assessed and shall be collected a tax equal to three and
234 one-half percent (3-1/2%) of the total contract price or
235 compensation received when such compensation exceeds Ten Thousand
236 Dollars (\$10,000.00).

237 The words, terms and phrases as used in this subsection shall
238 have the meaning ascribed to them as follows:

239 "Operator" -- One who holds all or a fraction of the working
240 or operating rights in an oil or gas lease, and is obligated for
241 the costs of production either as a fee owner or under a lease or
242 any other form of contract creating working or operating rights.

243 "Bottom-hole contribution" -- Money or property given to an
244 operator for his use in the drilling of a well on property in
245 which the payor has no interest. The contribution is payable
246 whether the well is productive or nonproductive.

247 "Dry-hole contribution" -- Money or property given to an
248 operator for his use in the drilling of a well on property in
249 which the payor has no interest. Such contribution is payable
250 only in the event the well is found to be nonproductive.

251 "Turnkey drilling contract" -- A contract for the drilling of
252 a well which requires the driller to drill a well and, if
253 commercial production is obtained, to equip the well to such stage
254 that the lessee or operator may turn a valve and the oil will flow
255 into a tank.

256 "Total contract price or compensation received" -- As related
257 to oil and gas well contractors, shall include amounts received as

258 compensation for all costs of performing a turnkey drilling
259 contract; amounts received or to be received under assignment as
260 dry-hole money or bottom-hole money; and shall mean and include
261 anything of value received by the contractor as remuneration for
262 services taxable hereunder. When the kind and amount of
263 compensation received by the contractor is contingent upon
264 production, the taxable amount shall be the total compensation
265 receivable in the event the well is a dry hole. The taxable
266 amount in the event of production when the contractor receives a
267 production interest of an undetermined value in lieu of a fixed
268 compensation shall be an amount equal to the compensation to the
269 contractor if the well had been a dry hole.

270 (3) When the work to be performed under any contract is
271 sublet by the prime contractor to different persons, or in
272 separate contracts to the same persons, each such subcontractor
273 performing any part of said work shall be liable for the amount of
274 the tax which accrues on account of the work performed by such
275 person when the tax heretofore imposed has not been paid upon the
276 whole contract by the prime contractor.

277 When a person engaged in any business on which a tax is
278 levied in Section 27-65-23, also qualifies as a contractor, and
279 contracts with the owner of any project to perform any services in
280 excess of Ten Thousand Dollars (\$10,000.00) herein taxed, such
281 person shall pay the tax imposed by this section in lieu of the
282 tax imposed by Section 27-65-23.

283 Any person entering into any contract over Seventy-five
284 Thousand Dollars (\$75,000.00) as defined in this section shall,
285 before beginning the performance of such contract or contracts,
286 either pay the contractors' tax in advance, together with any use
287 taxes due under Section 27-67-5, or execute and file with the
288 Chairman of the State Tax Commission a good and valid bond in a
289 surety company authorized to do business in this state, or with
290 sufficient sureties to be approved by the commissioner conditioned

291 that all taxes which may accrue to the State of Mississippi under
292 this chapter, or under Section 27-67-5 and Section 27-7-5, will be
293 paid when due. Such bonds shall be either (a) "job bonds" which
294 guarantee payment when due of the aforesaid taxes resulting from
295 performance of a specified job or activity regardless of date of
296 completion; or (b) "blanket bonds" which guarantee payment when
297 due of the aforesaid taxes resulting from performance of all jobs
298 or activities taxable under this section begun during the period
299 specified therein, regardless of date of completion. The payments
300 of the taxes due or the execution and filing of a surety bond
301 shall be a condition precedent to the commencing work on any
302 contract taxed hereunder. Provided, that when any bond is filed
303 in lieu of the prepayment of the tax under this section, that the
304 tax shall be payable monthly on the amount received during the
305 previous month, and any use taxes due shall be payable on or
306 before the twentieth day of the month following the month in which
307 the property is brought into Mississippi.

308 Any person failing either to execute any bond herein
309 provided, or to pay the taxes in advance, before beginning the
310 performance of any contract shall be denied the right to perform
311 such contract until he complies with such requirements, and the
312 commissioner is hereby authorized to proceed either under Section
313 27-65-59, or by injunction to prevent any activity in the
314 performance of such contract until either a satisfactory bond is
315 executed and filed, or all taxes are paid in advance, and a
316 temporary injunction enjoining the execution of such contract
317 shall be granted without notice by any judge or chancellor now
318 authorized by law to grant injunctions.

319 Any person liable for a tax under this section may apply for
320 and obtain a material purchase certificate from the commissioner
321 which may entitle the holder to purchase materials and services
322 that are to become a component part of the structure to be erected
323 or repaired with no tax due. Provided, that the contractor

324 applying for the contractor's material purchase certificate shall
325 furnish the State Tax Commission a list of all work sublet to
326 others, indicating the amount of work to be performed, and the
327 names and addresses of each subcontractor.

328 SECTION 3. Nothing in this act shall affect or defeat any
329 claim, assessment, appeal, suit, right or cause of action for
330 taxes due or accrued under the sales tax laws before the date on
331 which this act becomes effective, whether such claims,
332 assessments, appeals, suits or actions have been begun before the
333 date on which this act becomes effective or are begun thereafter;
334 and the provisions of the sales tax laws are expressly continued
335 in full force, effect and operation for the purpose of the
336 assessment, collection and enrollment of liens for any taxes due
337 or accrued and the execution of any warrant under such laws before
338 the date on which this act becomes effective, and for the
339 imposition of any penalties, forfeitures or claims for failure to
340 comply with such laws.

341 SECTION 4. This act shall take effect and be in force from
342 and after July 1, 2001.