

By: Senator(s) Blackmon

To: Finance

SENATE BILL NO. 2573

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,



cost of materials used, labor costs, interest paid, losses or any expense whatever.

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

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

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

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

(l) "Newspaper" means a periodical which:

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



(ii) Has been established and published continuously for at least twelve (12) months;

(iii) Is regularly issued at stated intervals no less frequently than once a week, bears a date of issue, and is numbered consecutively; provided, however, that publication on legal holidays of this state or of the United States and on Saturdays and Sundays shall not be required, and failure to publish not more than two (2) regular issues in any calendar year shall not exclude a periodical from this definition;

(iv) Is issued from a known office of publication, which shall be the principal public business office of the newspaper and need not be the place at which the periodical is printed and a newspaper shall be deemed to be "published" at the place where its known office of publication is located;

(v) Is formed of printed sheets; provided, however, that a periodical that is reproduced by the stencil, mimeograph or hectograph process shall not be considered to be a "newspaper"; and

(vi) Is originated and published for the dissemination of current news and intelligence of varied, broad and general public interest, announcements and notices, opinions as editorials on a regular or irregular basis, and advertising and miscellaneous reading matter.

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

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



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

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

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



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

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

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

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

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

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

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

"Total contract price or compensation received" -- As related 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



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

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

Any person liable for a tax under this section may apply for and obtain a material purchase certificate from the commissioner which may entitle the holder to purchase materials and services that are to become a component part of the structure to be erected 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, 2002.

