

By: Representative Chism (By Request)

To: Ways and Means

HOUSE BILL NO. 1607

1 AN ACT TO AMEND SECTIONS 27-65-17 AND 27-65-23, MISSISSIPPI
 2 CODE OF 1972, TO PROVIDE THAT SALES OF TANGIBLE PERSONAL PROPERTY
 3 AND SERVICES, EXCEPT SALES OF RAW MATERIALS, TO MANUFACTURERS
 4 SHALL BE TAXED AT THE RATE OF TWO PERCENT; TO AMEND SECTION
 5 27-65-21, TO PROVIDE THAT THE RATE OF THE CONTRACTOR'S SALES TAX
 6 ON AMOUNTS INCLUDED IN THE CONTRACT PRICE OR COMPENSATION RECEIVED
 7 REPRESENTING THE SALE OF MANUFACTURING OR PROCESSING MACHINERY FOR
 8 A MANUFACTURER OR CUSTOM PROCESSOR SHALL BE TWO PERCENT AND TO
 9 EXEMPT FROM THE CONTRACTOR'S SALES TAX THE PORTION OF CONTRACTS
 10 ATTRIBUTABLE TO SERVICES RENDERED TO MANUFACTURERS; AND FOR
 11 RELATED PURPOSES.

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

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

15 27-65-17. (1) Upon every person engaging or continuing
 16 within this state in the business of selling any tangible personal
 17 property whatsoever there is hereby levied, assessed and shall be
 18 collected a tax equal to seven percent (7%) of the gross proceeds
 19 of the retail sales of the business, except as otherwise provided
 20 herein.

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

23 Retail sales of farm implements sold to farmers and used
 24 directly in the production of poultry, ratite, domesticated fish
 25 as defined in Section 69-7-501, livestock, livestock products,
 26 agricultural crops or ornamental plant crops or used for other
 27 agricultural purposes shall be taxed at the rate of three percent
 28 (3%) when used on the farm. The three percent (3%) rate shall
 29 also apply to all equipment used in logging, pulpwood operations
 30 or tree farming which is either (a) self-propelled or which is (b)
 31 mounted so that it is (i) permanently attached to other equipment



32 which is self-propelled or (ii) permanently attached to other
33 equipment drawn by a vehicle which is self-propelled.

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

38 Sales of tangible personal property, except sales of raw
39 material, to a manufacturer shall be taxed at the rate of two
40 percent (2%).

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

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

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

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

59 A manufacturer selling at retail in this state shall be
60 required to make returns of the gross proceeds of such sales and
61 pay the tax imposed in this section.

62 Any person exercising any privilege taxable under Section
63 27-65-15 and selling his natural resource products at wholesale or



64 to exempt persons shall pay the tax levied by said section in lieu
65 of the tax levied by this section.

66 (2) From and after January 1, 1995, retail sales of private
67 carriers of passengers and light carriers of property, as defined
68 in Section 27-51-101, shall be taxed an additional two percent
69 (2%).

70 (3) In lieu of the tax levied in subsection (1) of this
71 section, there is levied on retail sales of truck-tractors and
72 semitrailers used in interstate commerce and registered under the
73 International Registration Plan (IRP) or any similar reciprocity
74 agreement or compact relating to the proportional registration of
75 commercial vehicles entered into as provided for in Section
76 27-19-143, a tax at the rate of three percent (3%) of the portion
77 of the sale that is attributable to the usage of such
78 truck-tractor or semitrailer in Mississippi. The portion of the
79 retail sale that is attributable to the usage of such
80 truck-tractor or semitrailer in Mississippi is the retail sales
81 price of the truck-tractor or semitrailer multiplied by the
82 percentage of the total miles traveled by the vehicle that are
83 traveled in Mississippi. The tax levied pursuant to this
84 subsection (3) shall be collected by the State Tax Commission from
85 the purchaser of such truck-tractor or semitrailer at the time of
86 registration of such truck-tractor or semitrailer.

87 **SECTION 2.** Section 27-65-23, Mississippi Code of 1972, is
88 amended as follows:

89 27-65-23. Upon every person engaging or continuing in any of
90 the following businesses or activities there is hereby levied,
91 assessed and shall be collected a tax equal to seven percent (7%)
92 of the gross income of the business, except as otherwise provided:

93 Air conditioning installation or repairs;

94 Automobile, aircraft, motorcycle, boat or any other
95 vehicle repairing or servicing;

96 Billiards, pool or domino parlors;



97 Bowling or tenpin alleys;
98 Burglar and fire alarm systems or services;
99 Car washing--automatic, self-service, or manual;
100 Computer software sales and services;
101 Cotton compresses or cotton warehouses;
102 Custom creosoting or treating, custom planning, custom
103 sawing;
104 Custom meat processing;
105 Electricians, electrical work, wiring, all repairs or
106 installation of electrical equipment;
107 Elevator or escalator installing, repairing or
108 servicing;
109 Film developing or photo finishing;
110 Foundries, machine or general repairing;
111 Furniture repairing or upholstering;
112 Grading, excavating, ditching, dredging or landscaping;
113 Hotels, motels, tourist courts or camps, trailer parks;
114 Insulating services or repairs;
115 Jewelry or watch repairing;
116 Laundering, cleaning, pressing or dyeing;
117 Marina services;
118 Mattress renovating;
119 Office and business machine repairing;
120 Parking garages and lots;
121 Plumbing or pipe fitting;
122 Public storage warehouses (There shall be no tax levied
123 on gross income of a public storage warehouse derived from the
124 temporary storage of tangible personal property in this state
125 pending shipping or mailing of the property to another state.);
126 Refrigerating equipment repairs;
127 Radio or television installing, repairing, or servicing;
128 Renting or leasing personal property used within this
129 state;



130 Services performed in connection with geophysical
131 surveying, exploring, developing, drilling, producing,
132 distributing, or testing of oil, gas, water and other mineral
133 resources;
134 Shoe repairing;
135 Storage lockers;
136 Telephone answering or paging services;
137 Termite or pest control services;
138 Tin and sheet metal shops;
139 TV cable systems, subscription TV services, and other
140 similar activities;
141 Vulcanizing, repairing or recapping of tires or tubes;
142 Welding; and
143 Woodworking or wood turning shops.

144 Income from services taxed herein performed for electric
145 power associations in the ordinary and necessary operation of
146 their generating or distribution systems shall be taxed at the
147 rate of one percent (1%).

148 Income from services taxed herein performed on materials for
149 use in track or track structures to a railroad whose rates are
150 fixed by the Interstate Commerce Commission or the Mississippi
151 Public Service Commission shall be taxed at the rate of three
152 percent (3%).

153 Income from services taxed herein performed for manufacturers
154 shall be taxed at the rate of two percent (2%).

155 Income from renting or leasing tangible personal property
156 used within this state shall be taxed at the same rates as sales
157 of the same property.

158 Persons doing business in this state who rent transportation
159 equipment with a situs within or without the state to common,
160 contract or private commercial carriers are taxed on that part of
161 the income derived from use within this state. If specific



162 accounting is impracticable, a formula may be used with approval
163 of the commissioner.

164 A lessor may deduct from the tax computed on the rental
165 income from tangible personal property a credit for sales or use
166 tax paid to this state at the time of purchase of the specific
167 personal property being leased or rented until such credit has
168 been exhausted.

169 Charges for custom processing and repairing services may be
170 excluded from gross taxable income when the property on which the
171 service was performed is delivered to the customer in another
172 state either by common carrier or in the seller's equipment.

173 When a taxpayer performs unitary services covered by this
174 section, which are performed both in intrastate and interstate
175 commerce, the commissioner is hereby invested with authority to
176 formulate in each particular case and to fix for such taxpayer in
177 each instance formulae of apportionment which will apportion to
178 this state, for taxation, that portion of the services which are
179 performed within the State of Mississippi.

180 **SECTION 3.** Section 27-65-21, Mississippi Code of 1972, is
181 amended as follows:

182 27-65-21. (1) (a) (i) Upon every person engaging or
183 continuing in this state in the business of contracting or
184 performing a contract or engaging in any of the activities, or
185 similar activities, listed below for a price, commission, fee or
186 wage, there is hereby levied, assessed and shall be collected a
187 tax equal to three and one-half percent (3-1/2%) of the total
188 contract price or compensation received, including all charges
189 related to the contract such as finance charges and late charges,
190 from constructing, building, erecting, repairing, grading,
191 excavating, drilling, exploring, testing or adding to any
192 building, highway, street, sidewalk, bridge, culvert, sewer,
193 irrigation or water system, drainage or dredging system, levee or
194 levee system or any part thereof, railway, reservoir, dam, power



195 plant, electrical system, air conditioning system, heating system,
196 transmission line, pipeline, tower, dock, storage tank, wharf,
197 excavation, grading, water well, any other improvement or
198 structure or any part thereof when the compensation received
199 exceeds Ten Thousand Dollars (\$10,000.00). Such activities shall
200 not include constructing, repairing or adding to property which
201 retains its identity as personal property. The tax imposed in
202 this section is levied upon the prime contractor and shall be paid
203 by him.

204 (ii) Amounts included in the contract price or
205 compensation received representing the sale of manufacturing or
206 processing machinery for a manufacturer or custom processor shall
207 be taxed at the rate of two percent (2%) in lieu of the three and
208 one-half percent (3-1/2%).

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

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

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

225 (iii) The contract price or compensation received
226 to restore, repair or replace a utility distribution or
227 transmission system that has been damaged due to ice storm,



228 hurricane, flood, tornado, wind, earthquake or other natural
229 disaster if such restoration, repair or replacement is performed
230 by the entity providing the service at its cost.

231 (iv) The portion of the contract price or
232 compensation received which is attributable to services rendered
233 to manufacturers.

234 (c) Sales of materials and services for use in the
235 activities hereby excluded from taxes imposed by this section,
236 except services used in activities excluded pursuant to paragraph
237 (b)(iii) of this subsection, shall be subject to taxes imposed by
238 other sections in this chapter.

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

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

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

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

258 "Dry-hole contribution" -- Money or property given to an
259 operator for his use in the drilling of a well on property in



260 which the payor has no interest. Such contribution is payable
261 only in the event the well is found to be nonproductive.

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

267 "Total contract price or compensation received" -- As related
268 to oil and gas well contractors, shall include amounts received as
269 compensation for all costs of performing a turnkey drilling
270 contract; amounts received or to be received under assignment as
271 dry-hole money or bottom-hole money; and shall mean and include
272 anything of value received by the contractor as remuneration for
273 services taxable hereunder. When the kind and amount of
274 compensation received by the contractor is contingent upon
275 production, the taxable amount shall be the total compensation
276 receivable in the event the well is a dry hole. The taxable
277 amount in the event of production when the contractor receives a
278 production interest of an undetermined value in lieu of a fixed
279 compensation shall be an amount equal to the compensation to the
280 contractor if the well had been a dry hole.

281 (3) When the work to be performed under any contract is
282 sublet by the prime contractor to different persons, or in
283 separate contracts to the same persons, each such subcontractor
284 performing any part of said work shall be liable for the amount of
285 the tax which accrues on account of the work performed by such
286 person when the tax heretofore imposed has not been paid upon the
287 whole contract by the prime contractor.

288 When a person engaged in any business on which a tax is
289 levied in Section 27-65-23, also qualifies as a contractor, and
290 contracts with the owner of any project to perform any services in
291 excess of Ten Thousand Dollars (\$10,000.00) herein taxed, such



292 person shall pay the tax imposed by this section in lieu of the
293 tax imposed by Section 27-65-23.

294 Any person entering into any contract over Seventy-five
295 Thousand Dollars (\$75,000.00) as defined in this section shall,
296 before beginning the performance of such contract or contracts,
297 either pay the contractors' tax in advance, together with any use
298 taxes due under Section 27-67-5, or execute and file with the
299 Chairman of the State Tax Commission a good and valid bond in a
300 surety company authorized to do business in this state, or with
301 sufficient sureties to be approved by the commissioner conditioned
302 that all taxes which may accrue to the State of Mississippi under
303 this chapter, or under Section 27-67-5 and Section 27-7-5, will be
304 paid when due. Such bonds shall be either (a) "job bonds" which
305 guarantee payment when due of the aforesaid taxes resulting from
306 performance of a specified job or activity regardless of date of
307 completion; or (b) "blanket bonds" which guarantee payment when
308 due of the aforesaid taxes resulting from performance of all jobs
309 or activities taxable under this section begun during the period
310 specified therein, regardless of date of completion. The payments
311 of the taxes due or the execution and filing of a surety bond
312 shall be a condition precedent to the commencing work on any
313 contract taxed hereunder. Provided, that when any bond is filed
314 in lieu of the prepayment of the tax under this section, that the
315 tax shall be payable monthly on the amount received during the
316 previous month, and any use taxes due shall be payable on or
317 before the twentieth day of the month following the month in which
318 the property is brought into Mississippi.

319 Any person failing either to execute any bond herein
320 provided, or to pay the taxes in advance, before beginning the
321 performance of any contract shall be denied the right to perform
322 such contract until he complies with such requirements, and the
323 commissioner is hereby authorized to proceed either under Section
324 27-65-59, or by injunction to prevent any activity in the



325 performance of such contract until either a satisfactory bond is
326 executed and filed, or all taxes are paid in advance, and a
327 temporary injunction enjoining the execution of such contract
328 shall be granted without notice by any judge or chancellor now
329 authorized by law to grant injunctions.

330 Any person liable for a tax under this section may apply for
331 and obtain a material purchase certificate from the commissioner
332 which may entitle the holder to purchase materials and services
333 that are to become a component part of the structure to be erected
334 or repaired with no tax due. Provided, that the contractor
335 applying for the contractor's material purchase certificate shall
336 furnish the State Tax Commission a list of all work sublet to
337 others, indicating the amount of work to be performed, and the
338 names and addresses of each subcontractor.

339 **SECTION 4.** Nothing in this act shall affect or defeat any
340 claim, assessment, appeal, suit, right or cause of action for
341 taxes due or accrued under the sales tax laws before the date on
342 which this act becomes effective, whether such claims,
343 assessments, appeals, suits or actions have been begun before the
344 date on which this act becomes effective or are begun thereafter;
345 and the provisions of the sales tax laws are expressly continued
346 in full force, effect and operation for the purpose of the
347 assessment, collection and enrollment of liens for any taxes due
348 or accrued and the execution of any warrant under such laws before
349 the date on which this act becomes effective, and for the
350 imposition of any penalties, forfeitures or claims for failure to
351 comply with such laws.

352 **SECTION 5.** This act shall take effect and be in force from
353 and after its passage.

