

By: Representative Fleming

To: Ways and Means

HOUSE BILL NO. 616

1 AN ACT TO AMEND SECTION 27-65-23, MISSISSIPPI CODE OF 1972,
 2 TO IMPOSE A SALES TAX ON THE RENTING OR LEASING OF REAL PROPERTY,
 3 EXCEPT WHEN THE RENTING OR LEASING IS FOR THE USE OF THE LAND
 4 ONLY; TO AMEND SECTION 27-65-75, MISSISSIPPI CODE OF 1972, TO
 5 PROVIDE THAT 50% OF THE SALES TAX REVENUE FROM SUCH RENTALS OR
 6 LEASES WITHIN A MUNICIPALITY SHALL BE ALLOCATED FOR DISTRIBUTION
 7 AND PAID TO SUCH MUNICIPALITY; TO PROVIDE THAT 25% OF THE SALES
 8 TAX REVENUE FROM SUCH RENTALS OR LEASES WITHIN A COUNTY,
 9 REGARDLESS OF WHETHER INSIDE OR OUTSIDE A MUNICIPALITY, SHALL BE
 10 ALLOCATED FOR DISTRIBUTION AND PAID TO SUCH COUNTY; TO AMEND
 11 SECTION 27-65-53, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;
 12 AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 27-65-23, Mississippi Code of 1972, is
 15 amended as follows:

16 27-65-23. Upon every person engaging or continuing in any of
 17 the following businesses or activities there is hereby levied,
 18 assessed and shall be collected a tax equal to seven percent (7%)
 19 of the gross income of the business, except as otherwise provided:

- 20 Air conditioning installation or repairs;
- 21 Automobile, aircraft, motorcycle, boat or any other
- 22 vehicle repairing or servicing;
- 23 Billiards, pool or domino parlors;
- 24 Bowling or tenpin alleys;
- 25 Burglar and fire alarm systems or services;
- 26 Car washing--automatic, self-service, or manual;
- 27 Computer software sales and services;
- 28 Cotton compresses or cotton warehouses;
- 29 Custom creosoting or treating, custom planing, custom
- 30 sawing;
- 31 Custom meat processing;

32 Electricians, electrical work, wiring, all repairs or
33 installation of electrical equipment;
34 Elevator or escalator installing, repairing or
35 servicing;
36 Film developing or photo finishing;
37 Foundries, machine or general repairing;
38 Furniture repairing or upholstering;
39 Grading, excavating, ditching, dredging or landscaping;
40 Hotels, motels, tourist courts or camps, trailer parks;
41 Insulating services or repairs;
42 Jewelry or watch repairing;
43 Laundering, cleaning, pressing or dyeing;
44 Marina services;
45 Mattress renovating;
46 Office and business machine repairing;
47 Parking garages and lots;
48 Plumbing or pipe fitting;
49 Public storage warehouses (There shall be no tax levied
50 on gross income of a public storage warehouse derived from the
51 temporary storage of tangible personal property in this state
52 pending shipping or mailing of the property to another state.);
53 Refrigerating equipment repairs;
54 Radio or television installing, repairing, or servicing;
55 Renting or leasing personal property used within this
56 state;
57 Services performed in connection with geophysical
58 surveying, exploring, developing, drilling, producing,
59 distributing, or testing of oil, gas, water and other mineral
60 resources;
61 Shoe repairing;
62 Storage lockers;
63 Telephone answering or paging services;
64 Termite or pest control services;

65 Tin and sheet metal shops;
66 TV cable systems, subscription TV services, and other
67 similar activities;
68 Vulcanizing, repairing or recapping of tires or tubes;
69 Welding; and
70 Woodworking or wood turning shops.

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

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

80 Income from the renting or leasing of real property, except
81 when the renting or leasing is for the use of the land only, shall
82 be taxed at the rate of one percent (1%).

83 Income from renting or leasing tangible personal property
84 used within this state shall be taxed at the same rates as sales
85 of the same property.

86 Persons doing business in this state who rent transportation
87 equipment with a situs within or without the state to common,
88 contract or private commercial carriers are taxed on that part of
89 the income derived from use within this state. If specific
90 accounting is impracticable, a formula may be used with approval
91 of the commissioner.

92 A lessor may deduct from the tax computed on the rental
93 income from tangible personal property a credit for sales or use
94 tax paid to this state at the time of purchase of the specific
95 personal property being leased or rented until such credit has
96 been exhausted.

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

101 When a taxpayer performs unitary services covered by this
102 section, which are performed both in intrastate and interstate
103 commerce, the commissioner is hereby invested with authority to
104 formulate in each particular case and to fix for such taxpayer in
105 each instance formulae of apportionment which will apportion to
106 this state, for taxation, that portion of the services which are
107 performed within the State of Mississippi.

108 **SECTION 2.** Section 27-65-75, Mississippi Code of 1972, is
109 amended as follows:

110 27-65-75. On or before the fifteenth day of each month, the
111 revenue collected under the provisions of this chapter during the
112 preceding month shall be paid and distributed as follows:

113 (1) On or before August 15, 1992, and each succeeding month
114 thereafter through July 15, 1993, eighteen percent (18%) of the
115 total sales tax revenue collected during the preceding month under
116 the provisions of this chapter, except that collected under the
117 provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on
118 business activities within a municipal corporation shall be
119 allocated for distribution to such municipality and paid to such
120 municipal corporation. On or before August 15, 1993 through July
121 15, 2004, and each succeeding month thereafter, eighteen and
122 one-half percent (18-1/2%) of the total sales tax revenue
123 collected during the preceding month under the provisions of this
124 chapter, except that collected under the provisions of Sections
125 27-65-15, 27-65-19(3) and 27-65-21, on business activities within
126 a municipal corporation shall be allocated for distribution to
127 such municipality and paid to such municipal corporation. On or
128 before August 15, 2004, and each succeeding month thereafter,
129 eighteen and one-half percent (18-1/2%) of the total sales tax

130 revenue collected during the preceding month under the provisions
131 of this chapter, except that collected under the provisions of
132 Sections 27-65-15, 27-65-19(3), 27-65-21 and that collected under
133 the provisions of 27-65-23 from the rental or lease of real
134 property, on business activities within a municipal corporation
135 and fifty percent (50%) of the sales tax revenue collected during
136 the preceding month under the provisions of Section 27-65-23 from
137 the rental or lease of real property within a municipal
138 corporation shall be allocated for distribution to such
139 municipality and paid to such municipal corporation.

140 A municipal corporation, for the purpose of distributing the
141 tax under this subsection, shall mean and include all incorporated
142 cities, towns and villages.

143 Monies allocated for distribution and credited to a municipal
144 corporation under this subsection may be pledged as security for
145 any loan received by the municipal corporation for the purpose of
146 capital improvements as authorized under Section 57-1-303, or
147 loans as authorized under Section 57-44-7, or water systems
148 improvements as authorized under Section 41-3-16.

149 In any county having a county seat which is not an
150 incorporated municipality, the distribution provided hereunder
151 shall be made as though the county seat was an incorporated
152 municipality; however, the distribution to such municipality shall
153 be paid to the county treasury wherein the municipality is located
154 and such funds shall be used for road, bridge and street
155 construction or maintenance therein.

156 (2) On or before September 15, 1987, and each succeeding
157 month thereafter, from the revenue collected under this chapter
158 during the preceding month One Million One Hundred Twenty-five
159 Thousand Dollars (\$1,125,000.00) shall be allocated for
160 distribution to municipal corporations as defined under subsection
161 (1) of this section in the proportion that the number of gallons
162 of gasoline and diesel fuel sold by distributors to consumers and

163 retailers in each such municipality during the preceding fiscal
164 year bears to the total gallons of gasoline and diesel fuel sold
165 by distributors to consumers and retailers in municipalities
166 statewide during the preceding fiscal year. The State Tax
167 Commission shall require all distributors of gasoline and diesel
168 fuel to report to the commission monthly the total number of
169 gallons of gasoline and diesel fuel sold by them to consumers and
170 retailers in each municipality during the preceding month. The
171 State Tax Commission shall have the authority to promulgate such
172 rules and regulations as is necessary to determine the number of
173 gallons of gasoline and diesel fuel sold by distributors to
174 consumers and retailers in each municipality. In determining the
175 percentage allocation of funds under this subsection for the
176 fiscal year beginning July 1, 1987, and ending June 30, 1988, the
177 State Tax Commission may consider gallons of gasoline and diesel
178 fuel sold for a period of less than one (1) fiscal year. For the
179 purposes of this subsection, the term "fiscal year" means the
180 fiscal year beginning July 1 of a year.

181 (3) On or before September 15, 1987, and on or before the
182 fifteenth day of each succeeding month, until the date specified
183 in Section 65-39-35, the proceeds derived from contractors' taxes
184 levied under Section 27-65-21 on contracts for the construction or
185 reconstruction of highways designated under the highway program
186 created under Section 65-3-97 shall, except as otherwise provided
187 in Section 31-17-127, be deposited into the State Treasury to the
188 credit of the State Highway Fund to be used to fund such highway
189 program. The Mississippi Department of Transportation shall
190 provide to the State Tax Commission such information as is
191 necessary to determine the amount of proceeds to be distributed
192 under this subsection.

193 (4) On or before August 15, 1994, and on or before the
194 fifteenth day of each succeeding month through July 15, 1999, from
195 the proceeds of gasoline, diesel fuel or kerosene taxes as

196 provided in Section 27-5-101(a)(ii)1, Four Million Dollars
197 (\$4,000,000.00) shall be deposited in the State Treasury to the
198 credit of a special fund designated as the "State Aid Road Fund,"
199 created by Section 65-9-17. On or before August 15, 1999, and on
200 or before the fifteenth day of each succeeding month, from the
201 total amount of the proceeds of gasoline, diesel fuel or kerosene
202 taxes apportioned by Section 27-5-101(a)(ii)1, Four Million
203 Dollars (\$4,000,000.00) or an amount equal to twenty-three and
204 one-fourth percent (23.25%) of such funds, whichever is the
205 greater amount, shall be deposited in the State Treasury to the
206 credit of the "State Aid Road Fund," created by Section 65-9-17.
207 Such funds shall be pledged to pay the principal of and interest
208 on state aid road bonds heretofore issued under Sections 19-9-51
209 through 19-9-77, in lieu of and in substitution for the funds
210 heretofore allocated to counties under this section. Such funds
211 may not be pledged for the payment of any state aid road bonds
212 issued after April 1, 1981; however, this prohibition against the
213 pledging of any such funds for the payment of bonds shall not
214 apply to any bonds for which intent to issue such bonds has been
215 published, for the first time, as provided by law prior to March
216 29, 1981. From the amount of taxes paid into the special fund
217 pursuant to this subsection and subsection (9) of this section,
218 there shall be first deducted and paid the amount necessary to pay
219 the expenses of the Office of State Aid Road Construction, as
220 authorized by the Legislature for all other general and special
221 fund agencies. The remainder of the fund shall be allocated
222 monthly to the several counties in accordance with the following
223 formula:

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

226 (b) One-third (1/3) shall be allocated to counties
227 based on the proportion that the total number of rural road miles

228 in a county bears to the total number of rural road miles in all
229 counties of the state; and

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

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

237 The amount of funds allocated to any county under this
238 subsection for any fiscal year after fiscal year 1994 shall not be
239 less than the amount allocated to such county for fiscal year
240 1994. Monies allocated to a county from the State Aid Road Fund
241 for fiscal year 1995 or any fiscal year thereafter that exceed the
242 amount of funds allocated to that county from the State Aid Road
243 Fund for fiscal year 1994, first must be expended by the county
244 for replacement or rehabilitation of bridges on the state aid road
245 system that have a sufficiency rating of less than twenty-five
246 (25), according to National Bridge Inspection standards before
247 such monies may be approved for expenditure by the State Aid Road
248 Engineer on other projects that qualify for the use of state aid
249 road funds.

250 Any reference in the general laws of this state or the
251 Mississippi Code of 1972 to Section 27-5-105 shall mean and be
252 construed to refer and apply to subsection (4) of Section
253 27-65-75.

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

260 (6) An amount each month beginning August 15, 1983, through
261 November 15, 1986, as specified in Section 6 of Chapter 542, Laws
262 of 1983, shall be paid into the special fund known as the
263 Correctional Facilities Construction Fund created in Section 6 of
264 Chapter 542, Laws of 1983.

265 (7) On or before August 15, 1992, and each succeeding month
266 thereafter through July 15, 2000, two and two hundred sixty-six
267 one-thousandths percent (2.266%) of the total sales tax revenue
268 collected during the preceding month under the provisions of this
269 chapter, except that collected under the provisions of Section
270 27-65-17(2) shall be deposited by the commission into the School
271 Ad Valorem Tax Reduction Fund created pursuant to Section
272 37-61-35. On or before August 15, 2000, and each succeeding month
273 thereafter, two and two hundred sixty-six one-thousandths percent
274 (2.266%) of the total sales tax revenue collected during the
275 preceding month under the provisions of this chapter, except that
276 collected under the provisions of Section 27-65-17(2), shall be
277 deposited into the School Ad Valorem Tax Reduction Fund created
278 under Section 37-61-35 until such time that the total amount
279 deposited into the fund during a fiscal year equals Forty-two
280 Million Dollars (\$42,000,000.00). Thereafter, the amounts
281 diverted under this subsection (7) during the fiscal year in
282 excess of Forty-two Million Dollars (\$42,000,000.00) shall be
283 deposited into the Education Enhancement Fund created under
284 Section 37-61-33 for appropriation by the Legislature as other
285 education needs and shall not be subject to the percentage
286 appropriation requirements set forth in Section 37-61-33.

287 (8) On or before August 15, 1992, and each succeeding month
288 thereafter, nine and seventy-three one-thousandths percent
289 (9.073%) of the total sales tax revenue collected during the
290 preceding month under the provisions of this chapter, except that
291 collected under the provisions of Section 27-65-17(2) shall be

292 deposited into the Education Enhancement Fund created pursuant to
293 Section 37-61-33.

294 (9) On or before August 15, 1994, and each succeeding month
295 thereafter, from the revenue collected under this chapter during
296 the preceding month, Two Hundred Fifty Thousand Dollars
297 (\$250,000.00) shall be paid into the State Aid Road Fund.

298 (10) On or before August 15, 1994, and each succeeding month
299 thereafter through August 15, 1995, from the revenue collected
300 under this chapter during the preceding month, Two Million Dollars
301 (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad
302 Valorem Tax Reduction Fund established in Section 27-51-105.

303 (11) Notwithstanding any other provision of this section to
304 the contrary, on or before February 15, 1995, and each succeeding
305 month thereafter, the sales tax revenue collected during the
306 preceding month under the provisions of Section 27-65-17(2) and
307 the corresponding levy in Section 27-65-23 on the rental or lease
308 of private carriers of passengers and light carriers of property
309 as defined in Section 27-51-101 shall be deposited, without
310 diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund
311 established in Section 27-51-105.

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

321 (13) On or before July 15, 1994, and on or before the
322 fifteenth day of each succeeding month thereafter, that portion of
323 the avails of the tax imposed in Section 27-65-22, which is
324 derived from activities held on the Mississippi state fairgrounds

325 complex, shall be paid into a special fund hereby created in the
326 State Treasury and shall be expended pursuant to legislative
327 appropriations solely to defray the costs of repairs and
328 renovation at such Trade Mart and Coliseum.

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

336 (15) Notwithstanding any other provision of this section to
337 the contrary, on or before September 15, 2000, and each succeeding
338 month thereafter, the sales tax revenue collected during the
339 preceding month under the provisions of Section 27-65-19(1)(f) and
340 (g)(i)2, shall be deposited, without diversion, into the
341 Telecommunications Ad Valorem Tax Reduction Fund established in
342 Section 27-38-7.

343 (16) On or before August 15, 2000, and each succeeding month
344 thereafter, the sales tax revenue collected during the preceding
345 month under the provisions of this chapter on the gross proceeds
346 of sales of a project as defined in Section 57-30-1 shall be
347 deposited, after all diversions except the diversion provided for
348 in subsection (1) of this section, into the Sales Tax Incentive
349 Fund created in Section 57-30-3.

350 (17) Notwithstanding any other provision of this section to
351 the contrary, on or before April 15, 2002, and each succeeding
352 month thereafter, the sales tax revenue collected during the
353 preceding month under Section 27-65-23 on sales of parking
354 services of parking garages and lots at airports shall be
355 deposited, without diversion, into the special fund created
356 pursuant to Section 27-5-101(d).

357 (18) On or before August 15, 2004, and each succeeding month
358 thereafter through July 15, 2005, from the sales tax revenue
359 collected during the preceding month under the provisions of this
360 chapter, Two Million Five Hundred Thousand Dollars (\$2,500,000.00)
361 shall be deposited into the Special Funds Transfer Fund created in
362 Section 4 of Chapter 556, Laws of 2003.

363 (19) On or before August 15, 2004, and each succeeding month
364 thereafter, twenty-five percent (25%) of the total sales tax
365 revenue collected during the preceding month under the provisions
366 of Section 27-65-23 from the rental or lease of real property
367 within a county, regardless of whether inside or outside any
368 municipal corporation, shall be allocated for distribution to such
369 county and paid to such county. The amount paid to any county
370 under this subsection (19) shall be in addition to any other funds
371 allocated for distribution to the various counties under this
372 section.

373 (20) The remainder of the amounts collected under the
374 provisions of this chapter shall be paid into the State Treasury
375 to the credit of the General Fund.

376 (21) It shall be the duty of the municipal officials of any
377 municipality which expands its limits, or of any community which
378 incorporates as a municipality, to notify the commissioner of such
379 action thirty (30) days before the effective date. Failure to so
380 notify the commissioner shall cause such municipality to forfeit
381 the revenue which it would have been entitled to receive during
382 this period of time when the commissioner had no knowledge of the
383 action. If any funds have been erroneously disbursed to any
384 municipality or county or any overpayment of tax is recovered by
385 the taxpayer, the commissioner may make correction and adjust the
386 error or overpayment with such municipality or county by
387 withholding the necessary funds from any subsequent payment to be
388 made to the municipality or county.

389 **SECTION 3.** Section 27-65-53, Mississippi Code of 1972, is
390 amended as follows:

391 27-65-53. If the commissioner finds that the taxpayer has
392 overpaid his tax for any reason and the taxpayer has discontinued
393 business and there is no subsequent liability upon which the
394 excess may be credited, or if the amount of the excess so paid
395 shall exceed the estimated liability for the next twelve (12)
396 months, the excess shall be refunded to the taxpayer. Such amount
397 shall be certified to the State Auditor of Public Accounts by the
398 commission. The said auditor is hereby authorized to make such
399 investigation and audit of the claim as he finds necessary. If he
400 finds that the commissioner is correct in his determination, the
401 auditor may issue his warrant to the State Treasurer in favor of
402 the taxpayer for the amount of tax erroneously paid into the State
403 Treasury, such refunds to be made from current sales tax
404 collections. If part of the overpayment has been disbursed to any
405 municipality or county, under authority of Section 27-65-75, the
406 municipality or county, having erroneously received the money,
407 shall adjust the amount with the commissioner, or the overpayment
408 may be withheld by the state from any funds due by the state to
409 the municipality or county.

410 Provided, that where the taxpayer has overpaid his tax, the
411 commissioner may give credit for same and allow the taxpayer to
412 take credit on a subsequent return or, if necessary, in his
413 discretion, have the taxpayer file for a refund as provided
414 herein.

415 If any overpayment of tax as reflected in an application or
416 amended return, or both, filed by the taxpayer, and verified by
417 the commissioner or otherwise determined to be due by the
418 commissioner or commission, is not refunded or credited to a
419 taxpayer's account within ninety (90) days after the application
420 or amended return is filed or the date the commission or
421 commissioner determines a refund is due, whichever is later,

422 interest at the rate of one percent (1%) per month shall be
423 allowed on such overpayment computed for the period after
424 expiration of the ninety-day period provided herein to the date of
425 payment.

426 **SECTION 4.** This act shall take effect and be in force from
427 and after July 1, 2004.