

By: Representative Howell

To: Ways and Means

HOUSE BILL NO. 1659

1 AN ACT TO AMEND SECTION 57-80-5, MISSISSIPPI CODE OF 1972, TO
2 INCLUDE SALES AND USE TAXES ON THE LEASE OF MACHINERY AND
3 EQUIPMENT ACQUIRED IN THE INITIAL CONSTRUCTION OF FACILITIES FOR,
4 OR FOR AN EXPANSION OF, A BUSINESS ENTERPRISE IN THE DEFINITION OF
5 THE TERM "STATE TAX" IN THE GROWTH AND PROSPERITY ACT; TO AMEND
6 SECTION 27-65-101, MISSISSIPPI CODE OF 1972, IN CONFORMITY
7 THERETO; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 57-80-5, Mississippi Code of 1972, is
10 amended as follows:

11 57-80-5. As used in this chapter, the following words and
12 phrases shall have the meanings ascribed herein unless the context
13 clearly indicates otherwise:

14 (a) "Approved business enterprise" means any business
15 enterprise seeking to locate or expand in a growth and prosperity
16 county, which business enterprise is approved by the MDA.

17 (b) "Business enterprise" means any new or expanded (i)
18 industry for the manufacturing, processing, assembling, storing,
19 warehousing, servicing, distributing or selling of any products or
20 goods, including products of agriculture; (ii) enterprises for
21 research and development, including, but not limited to,
22 scientific laboratories; or (iii) such other businesses or
23 industry as will be in furtherance of the public purposes of this
24 chapter as determined by the MDA and which creates a minimum of
25 ten (10) jobs. "Business enterprise" does not include retail or
26 gaming businesses or electrical generation facilities.

27 (c) "Eligible supervisors district" means a supervisors
28 district as such district exists on January 1, 2001:

29 (i) In which thirty percent (30%) or more of such
30 district's population as of June 30, 2000, is at or below the
31 federal poverty level according to the official data compiled by
32 the United States Census Bureau as of June 30, 2000, or the
33 official 1990 census poverty rate data (the official 1990 census
34 poverty rate data shall not be used to make any such determination
35 after December 31, 2002);

36 (ii) Which is contiguous to a county that meets
37 the criteria of Section 37(1)(b); and

38 (iii) Which is located in a county which has been
39 issued a certificate of public convenience and necessity under
40 this chapter.

41 (d) "Growth and prosperity counties" means those
42 counties which meet the requirements of this chapter and which
43 have by resolution or order given its consent to participate in
44 the Growth and Prosperity Program.

45 (e) "Local tax" means any county or municipal ad
46 valorem tax imposed on the approved business enterprise pursuant
47 to law, except the school portion of the tax and any portion of
48 the tax imposed to pay the cost of providing fire and police
49 protection.

50 (f) "Local taxing authority" means any county or
51 municipality which by resolution or order has given its consent to
52 participate in the Growth and Prosperity Program acting through
53 its respective board of supervisors or the municipal governing
54 board, council, commission or other legal authority.

55 (g) "MDA" means the Mississippi Development Authority.

56 (h) "State tax" means:

57 (i) Any sales and use tax imposed on the business
58 enterprise pursuant to law related to the purchase of component
59 building materials and equipment for initial construction of
60 facilities or expansion of facilities in a growth and prosperity
61 county or supervisors districts, as the case may be;

62 (ii) All income tax imposed pursuant to law on
63 income earned by the business enterprise in a growth and
64 prosperity county, or supervisors district, as the case may be;

65 (iii) Franchise tax imposed pursuant to law on the
66 value of capital used, invested or employed by the business
67 enterprise in a growth and prosperity county, or supervisors
68 district, as the case may be; and

69 (iv) Any sales and use tax imposed on the lease of
70 machinery and equipment acquired in the initial construction to
71 establish the facility or for an expansion, including, but not
72 limited to, leases in existence prior to January 1, 2001, as
73 certified by the MDA, in a growth and prosperity county, or
74 supervisors district, as the case may be.

75 **SECTION 2.** Section 27-65-101, Mississippi Code of 1972, is
76 amended as follows:

77 27-65-101. (1) The exemptions from the provisions of this
78 chapter which are of an industrial nature or which are more
79 properly classified as industrial exemptions than any other
80 exemption classification of this chapter shall be confined to
81 those persons or property exempted by this section or by the
82 provisions of the Constitution of the United States or the State
83 of Mississippi. No industrial exemption as now provided by any
84 other section except Section 57-3-33 shall be valid as against the
85 tax herein levied. Any subsequent industrial exemption from the
86 tax levied hereunder shall be provided by amendment to this
87 section. No exemption provided in this section shall apply to
88 taxes levied by Section 27-65-15 or 27-65-21.

89 The tax levied by this chapter shall not apply to the
90 following:

91 (a) Sales of boxes, crates, cartons, cans, bottles and
92 other packaging materials to manufacturers and wholesalers for use
93 as containers or shipping materials to accompany goods sold by
94 said manufacturers or wholesalers where possession thereof will

95 pass to the customer at the time of sale of the goods contained
96 therein and sales to anyone of containers or shipping materials
97 for use in ships engaged in international commerce.

98 (b) Sales of raw materials, catalysts, processing
99 chemicals, welding gases or other industrial processing gases
100 (except natural gas) to a manufacturer for use directly in
101 manufacturing or processing a product for sale or rental or
102 repairing or reconditioning vessels or barges of fifty (50) tons
103 load displacement and over. For the purposes of this exemption,
104 electricity used directly in the electrolysis process in the
105 production of sodium chlorate shall be considered a raw material.
106 This exemption shall not apply to any property used as fuel except
107 to the extent that such fuel comprises by-products which have no
108 market value.

109 (c) The gross proceeds of sales of dry docks, offshore
110 drilling equipment for use in oil exploitation or production,
111 vessels or barges of fifty (50) tons load displacement and over,
112 when sold by the manufacturer or builder thereof.

113 (d) Sales to commercial fishermen of commercial fishing
114 boats of over five (5) tons load displacement and not more than
115 fifty (50) tons load displacement as registered with the United
116 States Coast Guard and licensed by the Mississippi Commission on
117 Marine Resources.

118 (e) The gross income from repairs to vessels and barges
119 engaged in foreign trade or interstate transportation.

120 (f) Sales of petroleum products to vessels or barges
121 for consumption in marine international commerce or interstate
122 transportation businesses.

123 (g) Sales and rentals of rail rolling stock (and
124 component parts thereof) for ultimate use in interstate commerce
125 and gross income from services with respect to manufacturing,
126 repairing, cleaning, altering, reconditioning or improving such
127 rail rolling stock (and component parts thereof).

128 (h) Sales of raw materials, catalysts, processing
129 chemicals, welding gases or other industrial processing gases
130 (except natural gas) used or consumed directly in manufacturing,
131 repairing, cleaning, altering, reconditioning or improving such
132 rail rolling stock (and component parts thereof). This exemption
133 shall not apply to any property used as fuel.

134 (i) Sales of machinery or tools or repair parts
135 therefor or replacements thereof, fuel or supplies used directly
136 in manufacturing, converting or repairing ships of three thousand
137 (3,000) tons load displacement and over, but not to include office
138 and plant supplies or other equipment not directly used on the
139 ship being built, converted or repaired.

140 (j) Sales of tangible personal property to persons
141 operating ships in international commerce for use or consumption
142 on board such ships. This exemption shall be limited to cases in
143 which procedures satisfactory to the commissioner, ensuring
144 against use in this state other than on such ships, are
145 established.

146 (k) Sales of materials used in the construction of a
147 building, or any addition or improvement thereon, and sales of any
148 machinery and equipment not later than three (3) months after the
149 completion of construction of the building, or any addition
150 thereon, to be used therein, to qualified businesses, as defined
151 in Section 57-51-5, which are located in a county or portion
152 thereof designated as an enterprise zone pursuant to Sections
153 57-51-1 through 57-51-15.

154 (l) Sales of materials used in the construction of a
155 building, or any addition or improvement thereon, and sales of any
156 machinery and equipment not later than three (3) months after the
157 completion of construction of the building, or any addition
158 thereon, to be used therein, to qualified businesses, as defined
159 in Section 57-54-5.

160 (m) Income from storage and handling of perishable
161 goods by a public storage warehouse.

162 (n) The value of natural gas lawfully injected into the
163 earth for cycling, repressuring or lifting of oil, or lawfully
164 vented or flared in connection with the production of oil;
165 however, if any gas so injected into the earth is sold for such
166 purposes, then the gas so sold shall not be exempt.

167 (o) The gross collections from self-service commercial
168 laundering, drying, cleaning and pressing equipment.

169 (p) Sales of materials used in the construction of a
170 building, or any addition or improvement thereon, and sales of any
171 machinery and equipment not later than three (3) months after the
172 completion of construction of the building, or any addition
173 thereon, to be used therein, to qualified companies, certified as
174 such by the Mississippi Development Authority under Section
175 57-53-1.

176 (q) Sales of component materials used in the
177 construction of a building, or any addition or improvement
178 thereon, sales of machinery and equipment to be used therein, and
179 sales of manufacturing or processing machinery and equipment which
180 is permanently attached to the ground or to a permanent foundation
181 and which is not by its nature intended to be housed within a
182 building structure, not later than three (3) months after the
183 initial start-up date, to permanent business enterprises engaging
184 in manufacturing or processing in Tier Three areas (as such term
185 is defined in Section 57-73-21), which businesses are certified by
186 the State Tax Commission as being eligible for the exemption
187 granted in this paragraph (q).

188 (r) Sales of component materials used in the
189 construction of a building, or any addition or improvement
190 thereon, and sales of any machinery and equipment not later than
191 three (3) months after the completion of the building, addition or
192 improvement thereon, to be used therein, for any company

193 establishing or transferring its national or regional headquarters
194 from within or outside the State of Mississippi and creating a
195 minimum of thirty-five (35) jobs at the new headquarters in this
196 state. The Tax Commission shall establish criteria and prescribe
197 procedures to determine if a company qualifies as a national or
198 regional headquarters for the purpose of receiving the exemption
199 provided in this paragraph.

200 (s) The gross proceeds from the sale of semitrailers,
201 trailers, boats, travel trailers, motorcycles and all-terrain
202 cycles if exported from this state within forty-eight (48) hours
203 and registered and first used in another state.

204 (t) Gross income from the storage and handling of
205 natural gas in underground salt domes and in other underground
206 reservoirs, caverns, structures and formations suitable for such
207 storage.

208 (u) Sales of machinery and equipment to nonprofit
209 organizations if the organization: (i) is tax-exempt pursuant to
210 Section 501(c)(4) of the Internal Revenue Code of 1986, as
211 amended; (ii) assists in the implementation of the national
212 contingency plan or area contingency plan, and which is created in
213 response to the requirements of Title IV, Subtitle B of the Oil
214 Pollution Act of 1990, Public Law 101-380; and (iii) engages
215 primarily in programs to contain, clean up and otherwise mitigate
216 spills of oil or other substances occurring in the United States
217 coastal and tidal waters. For purposes of this exemption,
218 "machinery and equipment" means any ocean-going vessels, barges,
219 booms, skimmers and other capital equipment used primarily in the
220 operations of nonprofit organizations referred to herein.

221 (v) Sales or leases of * * * materials and equipment to
222 approved business enterprises as provided under the Growth and
223 Prosperity Act.

224 (w) From and after July 1, 2001, sales of pollution
225 control equipment to manufacturers or custom processors for

226 industrial use. For the purposes of this exemption, "pollution
227 control equipment" means equipment, devices, machinery or systems
228 used or acquired to prevent, control, monitor or reduce air, water
229 or groundwater pollution, or solid or hazardous waste as required
230 by federal or state law or regulation.

231 (x) Sales or leases to a manufacturer of motor vehicles
232 operating a project that has been certified by the Mississippi
233 Major Economic Impact Authority as a project as defined in Section
234 57-75-5(f)(iv)1 of machinery and equipment; special tooling such
235 as dies, molds, jigs and similar items treated as special tooling
236 for federal income tax purposes; or repair parts therefor or
237 replacements thereof; repair services thereon; fuel, supplies,
238 electricity, coal and natural gas used directly in the manufacture
239 of motor vehicles or motor vehicle parts or used to provide
240 climate control for manufacturing areas.

241 (y) Sales or leases of component materials, machinery
242 and equipment used in the construction of a building, or any
243 addition or improvement thereon to an enterprise operating a
244 project that has been certified by the Mississippi Major Economic
245 Impact Authority as a project as defined in Section
246 57-75-5(f)(iv)1 and any other sales or leases required to
247 establish or operate such project.

248 (z) Sales of component materials and equipment to a
249 business enterprise as provided under Section 57-64-33.

250 (2) Sales of component materials used in the construction of
251 a building, or any addition or improvement thereon, sales of
252 machinery and equipment to be used therein, and sales of
253 manufacturing or processing machinery and equipment which is
254 permanently attached to the ground or to a permanent foundation
255 and which is not by its nature intended to be housed within a
256 building structure, not later than three (3) months after the
257 initial start-up date, to permanent business enterprises engaging
258 in manufacturing or processing in Tier Two areas and Tier One

259 areas (as such areas are designated in accordance with Section
260 57-73-21), which businesses are certified by the State Tax
261 Commission as being eligible for the exemption granted in this
262 paragraph, shall be exempt from one-half (1/2) of the taxes
263 imposed on such transactions under this chapter.

264 (3) (a) For purposes of this subsection:

265 (i) "Telecommunications enterprises" shall have
266 the meaning ascribed to such term in Section 57-73-21(13);

267 (ii) "Tier One areas" mean counties designated as
268 Tier One areas pursuant to Section 57-73-21(1);

269 (iii) "Tier Two areas" mean counties designated as
270 Tier Two areas pursuant to Section 57-73-21(1);

271 (iv) "Tier Three areas" mean counties designated
272 as Tier Three areas pursuant to Section 57-73-21(1); and

273 (v) "Equipment used in the deployment of broadband
274 technologies" means any equipment capable of being used for or in
275 connection with the transmission of information at a rate, prior
276 to taking into account the effects of any signal degradation, that
277 is not less than three hundred eighty-four (384) kilobits per
278 second in at least one direction, including, but not limited to,
279 asynchronous transfer mode switches, digital subscriber line
280 access multiplexers, routers, servers, multiplexers, fiber optics
281 and related equipment.

282 (b) Sales of equipment to telecommunications
283 enterprises after June 30, 2003, and before July 1, 2013, that is
284 installed in Tier One areas and used in the deployment of
285 broadband technologies shall be exempt from one-half (1/2) of the
286 taxes imposed on such transactions under this chapter.

287 (c) Sales of equipment to telecommunications
288 enterprises after June 30, 2003, and before July 1, 2013, that is
289 installed in Tier Two and Tier Three areas and used in the
290 deployment of broadband technologies shall be exempt from the
291 taxes imposed on such transactions under this chapter.

292 **SECTION 3.** This act shall take effect and be in force from
293 and after July 1, 2004.