

By: Senator(s) Hewes

To: Finance

SENATE BILL NO. 2773

1 AN ACT TO AMEND SECTION 27-65-3, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE TERM "GROSS INCOME" AS USED IN THE MISSISSIPPI
3 SALES TAX LAW SHALL NOT INCLUDE PROPERTY TAXES PAID BY A PERSON
4 WHO IS PURCHASING EQUIPMENT UNDER A LEASE-PURCHASE AGREEMENT; AND
5 FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 27-65-3, Mississippi Code of 1972, is
8 amended as follows:

9 27-65-3. The words, terms and phrases, when used in this
10 chapter, shall have the meanings ascribed to them herein.

11 (a) "Tax Commission" means the State Tax Commission of
12 the State of Mississippi.

13 (b) "Commissioner" means the Chairman of the State Tax
14 Commission.

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

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

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

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

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

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

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

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

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

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

54 (g) "Delivery charges" shall mean and include any
55 expenses incurred by a seller in acquiring merchandise for sale in
56 the regular course of business commonly known as "freight-in" or
57 "transportation costs-in." "Delivery charges" also include any
58 charges made by the seller for delivery of property sold to the
59 purchaser.

60 (h) "Gross proceeds of sales" means the value
61 proceeding or accruing from the full sale price of tangible
62 personal property, including installation charges, carrying
63 charges, or any other addition to the selling price on account of
64 deferred payments by the purchaser, without any deduction for
65 delivery charges, cost of property sold, other expenses or losses,
66 or taxes of any kind except those expressly exempt by this
67 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" shall include the value of any
76 goods, 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 (i) "Gross income" means the total charges for service
85 or the total receipts (actual or accrued) derived from trades,
86 business or commerce by reason of the investment of capital in the
87 business engaged in, including the sale or rental of tangible
88 personal property, compensation for labor and services performed,
89 and including the receipts from the sales of property retained as
90 toll, without any deduction for rebates, cost of property sold,
91 cost of materials used, labor costs, interest paid, losses or any
92 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.

* * * "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.

"Gross income" shall not include property taxes paid by a person who is purchasing equipment under a lease-purchase agreement.

(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" shall mean and include 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.

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.** This act shall take effect and be in force from
175 and after July 1, 2004.