

By: Representative Formby

To: Ways and Means

HOUSE BILL NO. 445

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 27-67-3,
 5 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FINANCE CHARGES AND
 6 CARRYING CHARGES SHALL NOT BE INCLUDED WITHIN THE MEANING OF
 7 PURCHASE PRICE OR SALES PRICE FOR PURPOSES OF THE STATE USE TAX
 8 LAW; AND FOR RELATED PURPOSES.

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

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

12 27-65-3. The words, terms and phrases, when used in this
 13 chapter, shall have the meanings ascribed to them herein.

14 (a) "Tax Commission" means the State Tax Commission of
 15 the State of Mississippi.

16 (b) "Commissioner" means the Chairman of the State Tax
 17 Commission.

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

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

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

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

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

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

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

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

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

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

57 (g) "Delivery charges" * * * means * * * any expenses
58 incurred by a seller in acquiring merchandise for sale in the
59 regular course of business commonly known as "freight-in" or
60 "transportation costs-in." "Delivery charges" also include any
61 charges made by the seller for delivery of property sold to the
62 purchaser.

63 (h) "Gross proceeds of sales" means the value
64 proceeding or accruing from the full sale price of tangible
65 personal property, including installation charges, * * * without
66 any deduction for delivery charges, cost of property sold, other
67 expenses or losses, or taxes of any kind except those expressly
68 exempt by this chapter.

69 Where a trade-in is taken as part payment on tangible
70 personal property sold, "gross proceeds of sales" shall include
71 only the difference received between the selling price of the
72 tangible personal property and the amount allowed for a trade-in
73 of property of the same kind. When the trade-in is subsequently
74 sold, the selling price thereof shall be included in "gross
75 proceeds of sales."

76 "Gross proceeds of sales" * * * includes the value of any
77 goods, wares, merchandise or property purchased at wholesale or
78 manufactured, and any mineral or natural resources produced which
79 are excluded from the tax levied by Section 27-65-15, which are
80 withdrawn or used from an established business or from the stock
81 in trade for consumption or any other use in the business or by
82 the owner.

83 "Gross proceeds of sales" shall not include bad check or
84 draft service charges as provided for in Section 97-19-57.

85 "Gross proceeds of sales" does not include finance charges,
86 carrying charges or any other addition to the selling price as a
87 result of deferred payments by the purchaser.

88 (i) "Gross income" means the total charges for service
89 or the total receipts (actual or accrued) derived from trades,
90 business or commerce by reason of the investment of capital in the
91 business engaged in, including the sale or rental of tangible
92 personal property, compensation for labor and services performed,
93 and including the receipts from the sales of property retained as
94 toll, without any deduction for rebates, cost of property sold,

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

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

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

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

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

120 (l) "Newspaper" means a periodical which:

121 (i) Is not published primarily for advertising
122 purposes and has not contained more than seventy-five percent
123 (75%) advertising in more than one-half (1/2) of its issues during
124 any consecutive twelve-month period excluding separate advertising
125 supplements inserted into but separately identifiable from any
126 regular issue or issues;

127 (ii) Has been established and published
128 continuously for at least twelve (12) months;
129 (iii) Is regularly issued at stated intervals no
130 less frequently than once a week, bears a date of issue, and is
131 numbered consecutively; provided, however, that publication on
132 legal holidays of this state or of the United States and on
133 Saturdays and Sundays shall not be required, and failure to
134 publish not more than two (2) regular issues in any calendar year
135 shall not exclude a periodical from this definition;
136 (iv) Is issued from a known office of publication,
137 which shall be the principal public business office of the
138 newspaper and need not be the place at which the periodical is
139 printed and a newspaper shall be deemed to be "published" at the
140 place where its known office of publication is located;
141 (v) Is formed of printed sheets; provided,
142 however, that a periodical that is reproduced by the stencil,
143 mimeograph or hectograph process shall not be considered to be a
144 "newspaper"; and
145 (vi) Is originated and published for the
146 dissemination of current news and intelligence of varied, broad
147 and general public interest, announcements and notices, opinions
148 as editorials on a regular or irregular basis, and advertising and
149 miscellaneous reading matter.

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

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

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

175 **SECTION 2.** Section 27-67-3, Mississippi Code of 1972, is
176 amended as follows:

177 27-67-3. Whenever used in this article, the words, phrases
178 and terms shall have the meaning ascribed to them as follows:

179 (a) "Tax Commission" means the State Tax Commission of
180 the State of Mississippi.

181 (b) "Commissioner" means the Chairman of the State Tax
182 Commission.

183 (c) "Person" means any individual, firm, partnership,
184 joint venture, association, corporation, estate, trust, receiver,
185 syndicate or any other group or combination acting as a unit and
186 includes the plural as well as the singular in number. "Person"
187 shall also include husband or wife, or both, where joint benefits
188 are derived from the operation of a business taxed hereunder or
189 where joint benefits are derived from the use of property taxed
190 hereunder.

191 (d) "Taxpayer" means any person liable for the payment
192 of any tax hereunder, or liable for the collection and payment of
193 the tax.

194 (e) "Sale" or "purchase" means the exchange of
195 properties for money or other consideration, and the barter of
196 properties. Every closed transaction by which title to, or
197 possession of, tangible personal property passes shall constitute
198 a taxable event. A transaction whereby the possession of property
199 is transferred but the seller retains title as security for
200 payment of the selling price shall be deemed a sale.

201 (f) "Purchase price" or "sales price" means the total
202 amount for which tangible personal property is purchased or sold,
203 valued in money, including * * * installation and service charges,
204 and freight charges to the point of use within this state, without
205 any deduction for cost of property sold, expenses or losses, or
206 taxes of any kind except those exempt by the sales tax law.
207 "Purchase price" or "sales price" shall not include cash discounts
208 allowed and taken or merchandise returned by customers when the
209 total sales price is refunded either in cash or by credit, and
210 shall not include amounts allowed for a trade-in of similar
211 property. "Purchase price" or "sales price" does not include
212 finance charges, carrying charges or any other addition to the
213 selling price as a result of deferred payments by the purchaser.

214 (g) "Lease" or "rent" means any agreement entered into
215 for a consideration that transfers possession or control of
216 tangible personal property to a person for use within this state.

217 (h) "Value" means the estimated or assessed monetary
218 worth of a thing or property. The value of property transferred
219 into this state for sales promotion or advertising shall be an
220 amount not less than the cost paid by the transferor or donor.
221 The value of property which has been used in another state shall
222 be determined by its cost less straight line depreciation provided
223 that value shall never be less than twenty percent (20%) of the

224 cost or other method acceptable to the commissioner. On property
225 imported by the manufacturer thereof for rental or lease within
226 this state, value shall be the manufactured cost of the property
227 and freight to the place of use in Mississippi.

228 (i) "Tangible personal property" means personal
229 property perceptible to the human senses or by chemical analysis,
230 as opposed to real property or intangibles. "Tangible personal
231 property" shall include printed, mimeographed, multigraphed
232 matter, or material reproduced in any other manner, and books,
233 catalogs, manuals, publications or similar documents covering the
234 services of collecting, compiling or analyzing information of any
235 kind or nature. However, reports representing the work of persons
236 such as lawyers, accountants, engineers and similar professionals
237 shall not be included. "Tangible personal property" shall also
238 include tangible advertising or sales promotion materials such as,
239 but not limited to, displays, brochures, signs, catalogs, price
240 lists, point of sale advertising materials and technical manuals.
241 Tangible personal property shall also include computer software
242 programs.

243 (j) "Person doing business in this state," "person
244 maintaining a place of business within this state," or any similar
245 term means any person having within this state an office, a
246 distribution house, a salesroom or house, a warehouse, or any
247 other place of business, or owning personal property located in
248 this state used by another person, or installing personal property
249 in this state. This definition also includes any person selling
250 or taking orders for any tangible personal property, either
251 personally, by mail or through an employee representative,
252 salesman, commission agent, canvasser, solicitor or independent
253 contractor or by any other means from within the state.

254 Any person doing business under the terms of the article by
255 reason of coming under any one or more of the qualifying

256 provisions listed above shall be considered as doing business on
257 all transactions involving sales to persons within this state.

258 (k) "Use" or "consumption" means the first use or
259 intended use within this state of tangible personal property and
260 shall include rental or loan by owners or use by lessees or other
261 persons receiving benefits from use of the property. "Use" or
262 "consumption" shall include the benefit realized or to be realized
263 by persons importing or causing to be imported into this state
264 tangible advertising or sales promotion materials.

265 (l) "Storage" means keeping tangible personal property
266 in this state for subsequent use or consumption in this state.

267 **SECTION 3.** Nothing in this act shall affect or defeat any
268 claim, assessment, appeal, suit, right or cause of action for
269 taxes due or accrued under the sales tax laws or use tax laws
270 before the date on which this act becomes effective, whether such
271 claims, assessments, appeals, suits or actions have been begun
272 before the date on which this act becomes effective or are begun
273 thereafter; and the provisions of the sales tax laws and use tax
274 laws are expressly continued in full force, effect and operation
275 for the purpose of the assessment, collection and enrollment of
276 liens for any taxes due or accrued and the execution of any
277 warrant under such laws before the date on which this act becomes
278 effective, and for the imposition of any penalties, forfeitures or
279 claims for failure to comply with such laws.

280 **SECTION 4.** This act shall take effect and be in force from
281 and after July 1, 2005.