

By: Representative Watson

To: Ways and Means

HOUSE BILL NO. 1246

1 AN ACT TO AMEND SECTION 27-65-3, MISSISSIPPI CODE OF 1972, TO
2 INCLUDE PROMOTERS OF TEMPORARY EVENTS UNDER THE DEFINITION OF THE
3 TERM "PERSON" IN THE SALES TAX LAW; AND FOR RELATED PURPOSES.

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

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

7 27-65-3. The words, terms and phrases, when used in this
8 chapter, shall have the meanings ascribed to them herein.

9 (a) "Tax Commission" means the State Tax Commission of
10 the State of Mississippi.

11 (b) "Commissioner" means the Chairman of the State Tax
12 Commission.

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

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

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

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

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

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

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

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

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

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

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

59 (h) "Gross proceeds of sales" means the value
60 proceeding or accruing from the full sale price of tangible
61 personal property, including installation charges, carrying
62 charges, or any other addition to the selling price on account of
63 deferred payments by the purchaser, without any deduction for
64 delivery charges, cost of property sold, other expenses or losses,
65 or taxes of any kind except those expressly exempt by this
66 chapter.

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

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

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

83 (i) "Gross income" means the total charges for service
84 or the total receipts (actual or accrued) derived from trades,
85 business or commerce by reason of the investment of capital in the
86 business engaged in, including the sale or rental of tangible
87 personal property, compensation for labor and services performed,
88 and including the receipts from the sales of property retained as
89 toll, without any deduction for rebates, cost of property sold,
90 cost of materials used, labor costs, interest paid, losses or any
91 expense whatever.

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

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

101 (j) "Tangible personal property" means personal
102 property perceptible to the human senses or by chemical analysis
103 as opposed to real property or intangibles and shall include
104 property sold on an installed basis which may become a part of
105 real or personal property.

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

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

116 (i) Is not published primarily for advertising
117 purposes and has not contained more than seventy-five percent
118 (75%) advertising in more than one-half (1/2) of its issues during
119 any consecutive twelve-month period excluding separate advertising
120 supplements inserted into but separately identifiable from any
121 regular issue or issues;

122 (ii) Has been established and published
123 continuously for at least twelve (12) months;

124 (iii) Is regularly issued at stated intervals no
125 less frequently than once a week, bears a date of issue, and is
126 numbered consecutively; provided, however, that publication on
127 legal holidays of this state or of the United States and on
128 Saturdays and Sundays shall not be required, and failure to
129 publish not more than two (2) regular issues in any calendar year
130 shall not exclude a periodical from this definition;

131 (iv) Is issued from a known office of publication,
132 which shall be the principal public business office of the
133 newspaper and need not be the place at which the periodical is
134 printed and a newspaper shall be deemed to be "published" at the
135 place where its known office of publication is located;

136 (v) Is formed of printed sheets; provided,
137 however, that a periodical that is reproduced by the stencil,
138 mimeograph or hectograph process shall not be considered to be a
139 "newspaper"; and

140 (vi) Is originated and published for the
141 dissemination of current news and intelligence of varied, broad
142 and general public interest, announcements and notices, opinions
143 as editorials on a regular or irregular basis, and advertising and
144 miscellaneous reading matter.

145 The term "newspaper" shall include periodicals which are
146 designed primarily for free circulation or for circulation at
147 nominal rates as well as those which are designed for circulation
148 at more than a nominal rate.

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

155 For purposes of this paragraph, a periodical designed
156 primarily for free circulation or circulation at nominal rates

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

170 **SECTION 2.** This act shall take effect and be in force from
171 and after July 1, 2005.