

By: Representatives Guice, Malone

To: Ways and Means

## HOUSE BILL NO. 1705

1 AN ACT TO AMEND SECTIONS 27-65-17, 27-65-22 AND 27-65-23,  
2 MISSISSIPPI CODE OF 1972, TO LEVY AN ADDITIONAL SALES TAX UPON THE  
3 SALE OR RENTAL OF CERTAIN SEXUALLY EXPLICIT VIDEOS, DVD'S, FILMS,  
4 ELECTRONIC MEDIUM OR ADULT ORIENTED NOVELTIES, UPON CHARGES FOR  
5 ADMISSION TO CERTAIN SEXUALLY EXPLICIT EXHIBITIONS AND UPON  
6 PERSONS ENGAGED IN THE BUSINESS OF PROVIDING ACCESS TO CERTAIN  
7 SEXUALLY EXPLICIT CABLE OR SATELLITE TELEVISION CHANNELS; AND FOR  
8 RELATED PURPOSES.

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

10 **SECTION 1.** Section 27-65-17, Mississippi Code of 1972, is  
11 amended as follows:

12 27-65-17. (1) Upon every person engaging or continuing  
13 within this state in the business of selling any tangible personal  
14 property whatsoever there is hereby levied, assessed and shall be  
15 collected a tax equal to seven percent (7%) of the gross proceeds  
16 of the retail sales of the business, except as otherwise provided  
17 herein.

18 Retail sales of farm tractors shall be taxed at the rate of  
19 one percent (1%) when made to farmers for agricultural purposes.

20 Retail sales of farm implements sold to farmers and used  
21 directly in the production of poultry, ratite, domesticated fish  
22 as defined in Section 69-7-501, livestock, livestock products,  
23 agricultural crops or ornamental plant crops or used for other  
24 agricultural purposes shall be taxed at the rate of three percent  
25 (3%) when used on the farm. The three percent (3%) rate shall  
26 also apply to all equipment used in logging, pulpwood operations  
27 or tree farming which is either (a) self-propelled or which is (b)  
28 mounted so that it is (i) permanently attached to other equipment  
29 which is self-propelled or (ii) permanently attached to other  
30 equipment drawn by a vehicle which is self-propelled.

31 Except as otherwise provided in subsection (3) of this  
32 section, retail sales of aircraft, automobiles, trucks,  
33 truck-tractors, semitrailers and mobile homes shall be taxed at  
34 the rate of three percent (3%).

35 Sales of manufacturing machinery or manufacturing machine  
36 parts when made to a manufacturer or custom processor for plant  
37 use only when said machinery and machine parts will be used  
38 exclusively and directly within this state in manufacturing a  
39 commodity for sale, rental or in processing for a fee shall be  
40 taxed at the rate of one and one-half percent (1-1/2%).

41 Sales of materials for use in track and track structures to a  
42 railroad whose rates are fixed by the Interstate Commerce  
43 Commission or the Mississippi Public Service Commission shall be  
44 taxed at the rate of three percent (3%).

45 Sales of tangible personal property to electric power  
46 associations for use in the ordinary and necessary operation of  
47 their generating or distribution systems shall be taxed at the  
48 rate of one percent (1%).

49 Wholesale sales of beer shall be taxed at the rate of seven  
50 percent (7%), and the retailer shall file a return and compute the  
51 retail tax on retail sales but may take credit for the amount of  
52 the tax paid to the wholesaler on said return covering the  
53 subsequent sales of same property, provided adequate invoices and  
54 records are maintained to substantiate the credit.

55 Wholesale sales of food and drink for human consumption to  
56 full service vending machine operators to be sold through vending  
57 machines located apart from and not connected with other taxable  
58 businesses shall be taxed at the rate of eight percent (8%).

59 A manufacturer selling at retail in this state shall be  
60 required to make returns of the gross proceeds of such sales and  
61 pay the tax imposed in this section.

62 Any person exercising any privilege taxable under Section  
63 27-65-15 and selling his natural resource products at wholesale or

64 to exempt persons shall pay the tax levied by said section in lieu  
65 of the tax levied by this section.

66 (2) From and after January 1, 1995, retail sales of private  
67 carriers of passengers and light carriers of property, as defined  
68 in Section 27-51-101, shall be taxed an additional two percent  
69 (2%).

70 (3) In lieu of the tax levied in subsection (1) of this  
71 section, there is levied on retail sales of truck-tractors and  
72 semitrailers used in interstate commerce and registered under the  
73 International Registration Plan (IRP) or any similar reciprocity  
74 agreement or compact relating to the proportional registration of  
75 commercial vehicles entered into as provided for in Section  
76 27-19-143, a tax at the rate of three percent (3%) of the portion  
77 of the sale that is attributable to the usage of such  
78 truck-tractor or semitrailer in Mississippi. The portion of the  
79 retail sale that is attributable to the usage of such  
80 truck-tractor or semitrailer in Mississippi is the retail sales  
81 price of the truck-tractor or semitrailer multiplied by the  
82 percentage of the total miles traveled by the vehicle that are  
83 traveled in Mississippi. The tax levied pursuant to this  
84 subsection (3) shall be collected by the State Tax Commission from  
85 the purchaser of such truck-tractor or semitrailer at the time of  
86 registration of such truck-tractor or semitrailer.

87 (4) In addition to the tax otherwise levied under this  
88 section, there is levied a tax in the amount of twenty percent  
89 (20%) on:

90 (a) The sale of any video, DVD, film or electronic  
91 medium rated TV-MA, X, XX, XXX or NC17 by the Motion Picture  
92 Association of America or, if unrated, is reasonably anticipated,  
93 as determined by the State Tax Commission, to be rated by the  
94 Motion Picture Association of America as NC17 or more  
95 restrictively;

96           (b) The sale of adult oriented novelties. For the  
97 purposes of this paragraph (b), the term "adult oriented  
98 novelties" means any item, excluding clothing, that depicts or  
99 exhibits any of the following parts of the human body less than  
100 completely and opaquely covered: the genitals, the pubic region  
101 or a female breast below a point immediately above the top of the  
102 areola.

103           **SECTION 2.** Section 27-65-22, Mississippi Code of 1972, is  
104 amended as follows:

105           27-65-22. (1) Upon every person engaging or continuing in  
106 any amusement business or activity, which shall include all manner  
107 and forms of entertainment and amusement, all forms of diversion,  
108 sport, recreation or pastime, shows, exhibitions, contests,  
109 displays, games or any other and all methods of obtaining  
110 admission charges, donations, contributions or monetary charges of  
111 any character, from the general public or a limited or selected  
112 number thereof, directly or indirectly in return for other than  
113 tangible property or specific personal or professional services,  
114 whether such amusement is held or conducted in a public or private  
115 building, hotel, tent, pavilion, lot or resort, enclosed or in the  
116 open, there is hereby levied, assessed and shall be collected a  
117 tax equal to seven percent (7%) of the gross income received as  
118 admission, except as otherwise provided herein. In lieu of the  
119 rate set forth above, there is hereby imposed, levied and  
120 assessed, to be collected as hereinafter provided, a tax of three  
121 percent (3%) of gross revenue derived from sales of admission to  
122 publicly owned enclosed coliseums and auditoriums (except  
123 admissions to athletic contests between colleges and  
124 universities). There is hereby imposed, levied and assessed a tax  
125 of seven percent (7%) of gross revenue derived from sales of  
126 admission to events conducted on property managed by the  
127 Mississippi Veterans Memorial Stadium, which tax shall be

128 administered in the manner prescribed in this chapter, subject,  
129 however, to the provisions of Sections 55-23-3 through 55-23-11.

130 (2) In addition to the tax otherwise levied under this  
131 section, there is levied a tax in the amount of thirty percent  
132 (30%) or Five Dollars (\$5.00), whichever amount is greater, on the  
133 price charged for admission to exhibitions on film, video or other  
134 electronic medium shown in theaters, private booths or other  
135 arenas and venues accessible to the general public and which are  
136 rated TV-MA, X, XX, XXX or NC17 by the Motion Picture Association  
137 of America or, if unrated, are reasonably anticipated, as  
138 determined by the State Tax Commission, to be rated by the Motion  
139 Picture Association of America as NC17 or more restrictively.

140 (3) The operator of any place of amusement in this state  
141 shall collect the tax imposed by this section, in addition to the  
142 price charged for admission to any place of amusement, and under  
143 all circumstances the person conducting the amusement shall be  
144 liable for, and pay the tax imposed based upon the actual charge  
145 for such admission. Where permits are obtained for conducting  
146 temporary amusements by persons who are not the owners, lessees or  
147 custodians of the buildings, lots or places where the amusements  
148 are to be conducted, or where such temporary amusement is  
149 permitted by the owner, lessee or custodian of any place to be  
150 conducted without the procurement of a permit as required by this  
151 chapter, the tax imposed by this chapter shall be paid by the  
152 owner, lessee or custodian of such place where such temporary  
153 amusement is held or conducted, unless paid by the person  
154 conducting the amusement, and the applicant for such temporary  
155 permit shall furnish with the application therefor, the name and  
156 address of the owner, lessee or custodian of the premises upon  
157 which such amusement is to be conducted, and such owner, lessee or  
158 custodian shall be notified by the commission of the issuance of  
159 such permit, and of the joint liability for such tax.

160       (4) The tax imposed by this section shall not be levied or  
161 collected upon:

162           (a) Any admissions charged at any place of amusement  
163 operated by a religious, charitable or educational organization,  
164 or by a nonprofit civic club or fraternal organization (i) when  
165 the net proceeds of such admissions do not inure to any one or  
166 more individuals within such organization and are to be used  
167 solely for religious, charitable, educational or civic purposes;  
168 or (ii) when the entire net proceeds are used to defray the normal  
169 operating expenses of such organization, such as loan payments,  
170 maintenance costs, repairs and other operating expenses;

171           (b) Any admissions charged to hear gospel singing when  
172 promoted by a duly constituted local, bona fide nonprofit  
173 charitable or religious organization, irrespective of the fact  
174 that the performers and promoters are paid out of the proceeds of  
175 admissions collected, provided the program is composed entirely of  
176 gospel singing and not generally mixed with hillbilly or popular  
177 singing;

178           (c) Any admissions charged at any athletic games or  
179 contests between high schools or between grammar schools;

180           (d) Any admissions or tickets to or for baseball games  
181 between teams operated under a professional league franchise;

182           (e) Any admissions to county, state or community fairs,  
183 or any admissions to entertainments presented in community homes  
184 or houses which are publicly owned and controlled, and the  
185 proceeds of which do not inure to any individual or individuals;

186           (f) Any admissions or tickets to organized garden  
187 pilgrimages and to antebellum and historic houses when sponsored  
188 by an organized civic or garden club;

189           (g) Any admissions to any golf tournament held under  
190 the auspices of the Professional Golf Association or United States  
191 Golf Association wherein touring professionals compete, if such  
192 tournament is sponsored by a nonprofit association incorporated

193 under the laws of the State of Mississippi where no dividends are  
194 declared and the proceeds do not inure to any individual or group;

195 (h) Any admissions to university or community college  
196 conference, state, regional or national playoffs or championships;

197 (i) Any admissions or fees charged by any county or  
198 municipally owned and operated swimming pools, golf courses and  
199 tennis courts other than sales or rental of tangible personal  
200 property;

201 (j) Any admissions charged for the performance of  
202 symphony orchestras, operas, vocal or instrumental artists in  
203 which professional or amateur performers are compensated out of  
204 the proceeds of such admissions, when sponsored by local music or  
205 charity associations, or amateur dramatic performances or  
206 professional dramatic productions when sponsored by a children's  
207 dramatic association, where no dividends are declared, profits  
208 received, nor any salary or compensation paid to any of the  
209 members of such associations, or to any person for procuring or  
210 producing such performance; and

211 (k) Any admissions or tickets to or for hockey games  
212 between teams operated under a professional league franchise.

213 **SECTION 3.** Section 27-65-23, Mississippi Code of 1972, is  
214 amended as follows:

215 27-65-23. Upon every person engaging or continuing in any of  
216 the following businesses or activities there is hereby levied,  
217 assessed and shall be collected a tax equal to seven percent (7%)  
218 of the gross income of the business, except as otherwise provided:

219 Air conditioning installation or repairs;

220 Automobile, aircraft, motorcycle, boat or any other  
221 vehicle repairing or servicing;

222 Billiards, pool or domino parlors;

223 Bowling or tenpin alleys;

224 Burglar and fire alarm systems or services;

225 Car washing--automatic, self-service, or manual;

226 Computer software sales and services;  
227 Cotton compresses or cotton warehouses;  
228 Custom creosoting or treating, custom planing, custom  
229 sawing;  
230 Custom meat processing;  
231 Electricians, electrical work, wiring, all repairs or  
232 installation of electrical equipment;  
233 Elevator or escalator installing, repairing or  
234 servicing;  
235 Film developing or photo finishing;  
236 Foundries, machine or general repairing;  
237 Furniture repairing or upholstering;  
238 Grading, excavating, ditching, dredging or landscaping;  
239 Hotels, motels, tourist courts or camps, trailer parks;  
240 Insulating services or repairs;  
241 Jewelry or watch repairing;  
242 Laundering, cleaning, pressing or dyeing;  
243 Marina services;  
244 Mattress renovating;  
245 Office and business machine repairing;  
246 Parking garages and lots;  
247 Plumbing or pipe fitting;  
248 Public storage warehouses (There shall be no tax levied  
249 on gross income of a public storage warehouse derived from the  
250 temporary storage of tangible personal property in this state  
251 pending shipping or mailing of the property to another state.);  
252 Refrigerating equipment repairs;  
253 Radio or television installing, repairing, or servicing;  
254 Renting or leasing personal property used within this  
255 state;  
256 Services performed in connection with geophysical  
257 surveying, exploring, developing, drilling, producing,

258 distributing, or testing of oil, gas, water and other mineral  
259 resources;  
260 Shoe repairing;  
261 Storage lockers;  
262 Telephone answering or paging services;  
263 Termite or pest control services;  
264 Tin and sheet metal shops;  
265 TV cable systems, subscription TV services, and other  
266 similar activities;  
267 Vulcanizing, repairing or recapping of tires or tubes;  
268 Welding; and  
269 Woodworking or wood turning shops.

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

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

279 In addition to the tax otherwise levied under this section,  
280 there is levied a tax in the amount of twenty percent (20%) on  
281 income derived from persons engaged in the business of providing  
282 access to cable or satellite television channels whenever at least  
283 two-thirds (2/3) of the programming on such channels is rated  
284 TV-MA, X, XX, XXX or NC17 by the Motion Picture Association of  
285 America or, if unrated, is reasonably anticipated, as determined  
286 by the State Tax Commission, to be rated by the Motion Picture  
287 Association of America as NC17 or more restrictively.

288 Income from renting or leasing tangible personal property  
289 used within this state shall be taxed at the same rates as sales  
290 of the same property.

291 Persons doing business in this state who rent transportation  
292 equipment with a situs within or without the state to common,  
293 contract or private commercial carriers are taxed on that part of  
294 the income derived from use within this state. If specific  
295 accounting is impracticable, a formula may be used with approval  
296 of the commissioner.

297 A lessor may deduct from the tax computed on the rental  
298 income from tangible personal property a credit for sales or use  
299 tax paid to this state at the time of purchase of the specific  
300 personal property being leased or rented until such credit has  
301 been exhausted.

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

306 When a taxpayer performs unitary services covered by this  
307 section, which are performed both in intrastate and interstate  
308 commerce, the commissioner is hereby invested with authority to  
309 formulate in each particular case and to fix for such taxpayer in  
310 each instance formulae of apportionment which will apportion to  
311 this state, for taxation, that portion of the services which are  
312 performed within the State of Mississippi.

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