

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2746

1 AN ACT TO AMEND SECTION 27-65-21, MISSISSIPPI CODE OF 1972,  
2 WHICH LEVIES A CONTRACTOR'S SALES TAX, TO PROVIDE FOR THE ISSUANCE  
3 OF A JEOPARDY ASSESSMENT, LIEN AND WARRANT AGAINST UNQUALIFIED  
4 CONTRACTS AND CONTRACTS FOR WHICH TAXES HAVE NOT BEEN PREPAID OR  
5 BONDED IN A PROPER MANNER; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 27-65-21, Mississippi Code of 1972, is  
8 amended as follows:

9 27-65-21. (1) (a) (i) Upon every person engaging or  
10 continuing in this state in the business of contracting or  
11 performing a contract or engaging in any of the activities, or  
12 similar activities, listed below for a price, commission, fee or  
13 wage, there is hereby levied, assessed and shall be collected a  
14 tax equal to three and one-half percent (3-1/2%) of the total  
15 contract price or compensation received, including all charges  
16 related to the contract such as finance charges and late charges,  
17 from constructing, building, erecting, repairing, grading,  
18 excavating, drilling, exploring, testing or adding to any  
19 building, highway, street, sidewalk, bridge, culvert, sewer,  
20 irrigation or water system, drainage or dredging system, levee or  
21 levee system or any part thereof, railway, reservoir, dam, power  
22 plant, electrical system, air conditioning system, heating system,  
23 transmission line, pipeline, tower, dock, storage tank, wharf,  
24 excavation, grading, water well, any other improvement or  
25 structure or any part thereof when the compensation received  
26 exceeds Ten Thousand Dollars (\$10,000.00). Such activities shall  
27 not include constructing, repairing or adding to property which  
28 retains its identity as personal property. The tax imposed in

29 this section is levied upon the prime contractor and shall be paid  
30 by him.

31 (ii) Amounts included in the contract price or  
32 compensation received representing the sale of manufacturing or  
33 processing machinery for a manufacturer or custom processor shall  
34 be taxed at the rate of one and one-half percent (1-1/2%) in lieu  
35 of the three and one-half percent (3-1/2%).

36 (b) The following shall be excluded from the tax levied  
37 by this section:

38 (i) The contract price or compensation received  
39 for constructing, building, erecting, repairing or adding to any  
40 building, electrical system, air conditioning system, heating  
41 system or any other improvement or structure which is used for or  
42 primarily in connection with a residence or dwelling place for  
43 human beings. Such residences shall include homes, apartment  
44 buildings, condominiums, mobile homes, summer cottages, fishing  
45 and hunting camp buildings and similar buildings, but shall not  
46 include hotels, motels, hospitals, nursing or retirement homes,  
47 tourist cottages or other commercial establishments.

48 (ii) The portion of the total contract price  
49 attributable to design or engineering services if the total  
50 contract price for the project exceeds the sum of One Hundred  
51 Million Dollars (\$100,000,000.00).

52 (iii) The contract price or compensation received  
53 to restore, repair or replace a utility distribution or  
54 transmission system that has been damaged due to ice storm,  
55 hurricane, flood, tornado, wind, earthquake or other natural  
56 disaster if such restoration, repair or replacement is performed  
57 by the entity providing the service at its cost.

58 (c) Sales of materials and services for use in the  
59 activities hereby excluded from taxes imposed by this section,  
60 except services used in activities excluded pursuant to paragraph

61 (b)(iii) of this subsection, shall be subject to taxes imposed by  
62 other sections in this chapter.

63 (2) Upon every person engaging or continuing in this state  
64 in the business of contracting or performing a contract of  
65 redrilling, or working over, or of drilling an oil well or a gas  
66 well, regardless of whether such well is productive or  
67 nonproductive, for any valuable consideration, there is hereby  
68 levied, assessed and shall be collected a tax equal to three and  
69 one-half percent (3-1/2%) of the total contract price or  
70 compensation received when such compensation exceeds Ten Thousand  
71 Dollars (\$10,000.00).

72 The words, terms and phrases as used in this subsection shall  
73 have the meaning ascribed to them as follows:

74 "Operator" -- One who holds all or a fraction of the working  
75 or operating rights in an oil or gas lease, and is obligated for  
76 the costs of production either as a fee owner or under a lease or  
77 any other form of contract creating working or operating rights.

78 "Bottom-hole contribution" -- Money or property given to an  
79 operator for his use in the drilling of a well on property in  
80 which the payor has no interest. The contribution is payable  
81 whether the well is productive or nonproductive.

82 "Dry-hole contribution" -- Money or property given to an  
83 operator for his use in the drilling of a well on property in  
84 which the payor has no interest. Such contribution is payable  
85 only in the event the well is found to be nonproductive.

86 "Turnkey drilling contract" -- A contract for the drilling of  
87 a well which requires the driller to drill a well and, if  
88 commercial production is obtained, to equip the well to such stage  
89 that the lessee or operator may turn a valve and the oil will flow  
90 into a tank.

91 "Total contract price or compensation received" -- As related  
92 to oil and gas well contractors, shall include amounts received as  
93 compensation for all costs of performing a turnkey drilling

94 contract; amounts received or to be received under assignment as  
95 dry-hole money or bottom-hole money; and shall mean and include  
96 anything of value received by the contractor as remuneration for  
97 services taxable hereunder. When the kind and amount of  
98 compensation received by the contractor is contingent upon  
99 production, the taxable amount shall be the total compensation  
100 receivable in the event the well is a dry hole. The taxable  
101 amount in the event of production when the contractor receives a  
102 production interest of an undetermined value in lieu of a fixed  
103 compensation shall be an amount equal to the compensation to the  
104 contractor if the well had been a dry hole.

105 (3) When the work to be performed under any contract is  
106 sublet by the prime contractor to different persons, or in  
107 separate contracts to the same persons, each such subcontractor  
108 performing any part of said work shall be liable for the amount of  
109 the tax which accrues on account of the work performed by such  
110 person when the tax heretofore imposed has not been paid upon the  
111 whole contract by the prime contractor.

112 When a person engaged in any business on which a tax is  
113 levied in Section 27-65-23, also qualifies as a contractor, and  
114 contracts with the owner of any project to perform any services in  
115 excess of Ten Thousand Dollars (\$10,000.00) herein taxed, such  
116 person shall pay the tax imposed by this section in lieu of the  
117 tax imposed by Section 27-65-23.

118 Any person entering into any contract over Seventy-five  
119 Thousand Dollars (\$75,000.00) as defined in this section shall,  
120 before beginning the performance of such contract or contracts,  
121 either pay the contractors' tax in advance, together with any use  
122 taxes due under Section 27-67-5, or execute and file with the  
123 Chairman of the State Tax Commission a good and valid bond in a  
124 surety company authorized to do business in this state, or with  
125 sufficient sureties to be approved by the commissioner conditioned  
126 that all taxes which may accrue to the State of Mississippi under

127 this chapter, or under Section 27-67-5 and Section 27-7-5, will be  
128 paid when due. Such bonds shall be either (a) "job bonds" which  
129 guarantee payment when due of the aforesaid taxes resulting from  
130 performance of a specified job or activity regardless of date of  
131 completion; or (b) "blanket bonds" which guarantee payment when  
132 due of the aforesaid taxes resulting from performance of all jobs  
133 or activities taxable under this section begun during the period  
134 specified therein, regardless of date of completion. The payments  
135 of the taxes due or the execution and filing of a surety bond  
136 shall be a condition precedent to the commencing work on any  
137 contract taxed hereunder. Provided, that when any bond is filed  
138 in lieu of the prepayment of the tax under this section, that the  
139 tax shall be payable monthly on the amount received during the  
140 previous month, and any use taxes due shall be payable on or  
141 before the twentieth day of the month following the month in which  
142 the property is brought into Mississippi.

143 Any person failing either to execute any bond herein  
144 provided, or to pay the taxes in advance, before beginning the  
145 performance of any contract shall be denied the right to perform  
146 such contract until he complies with such requirements, and the  
147 commissioner is hereby authorized to proceed either under Section  
148 27-65-59, under Section 27-65-61 or by injunction to prevent any  
149 activity in the performance of such contract until either a  
150 satisfactory bond is executed and filed, or all taxes are paid in  
151 advance, and a temporary injunction enjoining the execution of  
152 such contract shall be granted without notice by any judge or  
153 chancellor now authorized by law to grant injunctions.

154 Any person liable for a tax under this section may apply for  
155 and obtain a material purchase certificate from the commissioner  
156 which may entitle the holder to purchase materials and services  
157 that are to become a component part of the structure to be erected  
158 or repaired with no tax due. Provided, that the contractor  
159 applying for the contractor's material purchase certificate shall

160 furnish the State Tax Commission a list of all work sublet to  
161 others, indicating the amount of work to be performed, and the  
162 names and addresses of each subcontractor.

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