

By: Representatives Brown, Watson

To: Ways and Means

HOUSE BILL NO. 9

1 AN ACT TO AMEND SECTION 27-65-21, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT ANY ENTITY AUTHORIZED TO ISSUE BUILDING PERMITS
3 SHALL NOT ISSUE ANY SUCH PERMIT UNTIL THE ENTITY HAS RECEIVED
4 OFFICIAL NOTIFICATION FROM THE STATE TAX COMMISSION THAT THE
5 COMMISSION HAS RECEIVED THE INFORMATION NECESSARY FOR ITS INITIAL
6 ADMINISTRATION OF SALES TAX IN REGARD TO THE WORK FOR WHICH THE
7 PERMIT IS REQUESTED; TO PROVIDE CIVIL AND CRIMINAL PENALTIES FOR
8 VIOLATIONS OF THIS PROVISION; AND FOR RELATED PURPOSES.

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

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

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

31 retains its identity as personal property. The tax imposed in
32 this section is levied upon the prime contractor and shall be paid
33 by him.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

166 (4) (a) A building permit shall not be issued by a
167 municipality, county, district or other entity authorized to issue
168 building permits, until the municipality, county, district or
169 other entity has received official notification from the Tax
170 Commission that the commission has received the information
171 necessary for its initial administration of sales tax in regard to
172 the work for which the permit is requested. This paragraph shall
173 not apply if the Tax Commission has determined that the work for
174 which the permit is requested is a type for which the information
175 required by this paragraph is not necessary.

176 (b) Any municipality, county, district or other entity
177 that issues a building permit in violation of this subsection or
178 that fails to maintain proof of any official notification that it
179 received from the Tax Commission, shall be subject to a civil fine
180 in the amount of One Hundred Dollars (\$100.00) for each violation
181 or failure. The Tax Commission is authorized to administer,
182 assess and collect the civil penalty in the same manner as it
183 administers, assesses and collects a tax under this chapter, and
184 this authority shall include, but not be limited to, the power to
185 examine the records of any person, municipality, county or other
186 entity regarding the issuance of building permits or maintenance
187 of records regarding building permits.

188 (c) Any employee, clerk or official of a municipality,
189 county, district or other entity authorized to issue building
190 permits, who knowingly or intentionally violates this subsection,
191 or who knowingly or intentionally directs another to violate this
192 subsection, shall be guilty of a misdemeanor and, upon conviction,
193 shall be fined an amount not to exceed Five Hundred Dollars
194 (\$500.00) or imprisoned for not more that six (6) months, or both.

195 **SECTION 2.** This act shall take effect and be in force from
196 and after its passage.