

By: Representative Hudson

To: Ways and Means

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 776

1 AN ACT TO AMEND SECTION 27-65-3, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT MEALS PREPARED BY A RESTAURANT AND PROVIDED AT NO
3 CHARGE TO EMPLOYEES OF THE RESTAURANT OR DONATED TO A CHARITABLE
4 ORGANIZATION THAT REGULARLY PROVIDES FOOD TO THE NEEDY AND THE
5 INDIGENT AND WHICH HAS BEEN GRANTED EXEMPTION FROM THE FEDERAL
6 INCOME TAX AS AN ORGANIZATION DESCRIBED IN SECTION 501(C)(3) OF
7 THE INTERNAL REVENUE CODE, SHALL NOT BE INCLUDED WITHIN THE
8 MEANING OF GROSS PROCEEDS OF SALES FOR PURPOSES OF THE STATE SALES
9 TAX LAW; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

59 (g) "Delivery charges" shall mean and include any
60 expenses incurred by a seller in acquiring merchandise for sale in
61 the regular course of business commonly known as "freight-in" or
62 "transportation costs-in." "Delivery charges" also include any

63 charges made by the seller for delivery of property sold to the
64 purchaser.

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

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

80 "Gross proceeds of sales" shall include the value of any
81 goods, wares, merchandise or property purchased at wholesale or
82 manufactured, and any mineral or natural resources produced which
83 are excluded from the tax levied by Section 27-65-15, which are
84 withdrawn or used from an established business or from the stock
85 in trade for consumption or any other use in the business or by
86 the owner. However, "gross proceeds of sales" does not include
87 meals prepared by a restaurant and provided at no charge to
88 employees of the restaurant or donated to a charitable
89 organization that regularly provides food to the needy and the
90 indigent and which has been granted exemption from the federal
91 income tax as an organization described in Section 501(c)(3) of
92 the Internal Revenue Code of 1986.

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

95 (i) "Gross income" means the total charges for service
96 or the total receipts (actual or accrued) derived from trades,
97 business or commerce by reason of the investment of capital in the
98 business engaged in, including the sale or rental of tangible
99 personal property, compensation for labor and services performed,
100 and including the receipts from the sales of property retained as
101 toll, without any deduction for rebates, cost of property sold,
102 cost of materials used, labor costs, interest paid, losses or any
103 expense whatever.

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

107 However, "gross income" or "gross proceeds of sales" shall
108 not be construed to include the value of goods returned by
109 customers when the total sale price is refunded either in cash or
110 by credit, or cash discounts allowed and taken on sales. Cash
111 discounts shall not include the value of trading stamps given with
112 a sale of property.

113 (j) "Tangible personal property" means personal
114 property perceptible to the human senses or by chemical analysis
115 as opposed to real property or intangibles and shall include
116 property sold on an installed basis which may become a part of
117 real or personal property.

118 (k) "Installation charges" shall mean and include the
119 charge for the application of tangible personal property to real
120 or personal property without regard to whether or not it becomes a
121 part of the real property or retains its personal property
122 classification. It shall include, but not be limited to, sales in
123 place of roofing, tile, glass, carpets, drapes, fences, awnings,
124 window air conditioning units, gasoline pumps, window guards,
125 floor coverings, carports, store fixtures, aluminum and plastic
126 siding, tombstones and similar personal property.

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

128 (i) Is not published primarily for advertising
129 purposes and has not contained more than seventy-five percent
130 (75%) advertising in more than one-half (1/2) of its issues during
131 any consecutive twelve-month period excluding separate advertising
132 supplements inserted into but separately identifiable from any
133 regular issue or issues;

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

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

143 (iv) Is issued from a known office of publication,
144 which shall be the principal public business office of the
145 newspaper and need not be the place at which the periodical is
146 printed and a newspaper shall be deemed to be "published" at the
147 place where its known office of publication is located;

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

152 (vi) Is originated and published for the
153 dissemination of current news and intelligence of varied, broad
154 and general public interest, announcements and notices, opinions
155 as editorials on a regular or irregular basis, and advertising and
156 miscellaneous reading matter.

157 The term "newspaper" shall include periodicals which are
158 designed primarily for free circulation or for circulation at
159 nominal rates as well as those which are designed for circulation
160 at more than a nominal rate.

161 The term "newspaper" shall not include a publication or
162 periodical which is published, sponsored by, is directly supported
163 financially by, or is published to further the interests of, or is
164 directed to, or has a circulation restricted in whole or in part
165 to any particular sect, denomination, labor or fraternal
166 organization or other special group or class or citizens.

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

182 **SECTION 2.** Nothing in this act shall affect or defeat any
183 claim, assessment, appeal, suit, right or cause of action for
184 taxes due or accrued under the sales tax laws before the date on
185 which this act becomes effective, whether such claims,
186 assessments, appeals, suits or actions have been begun before the
187 date on which this act becomes effective or are begun thereafter;
188 and the provisions of the sales tax laws are expressly continued
189 in full force, effect and operation for the purpose of the
190 assessment, collection and enrollment of liens for any taxes due
191 or accrued and the execution of any warrant under such laws before
192 the date on which this act becomes effective, and for the

193 imposition of any penalties, forfeitures or claims for failure to
194 comply with such laws.

195 **SECTION 3.** This act shall take effect and be in force from
196 and after July 1, 2006.