

By: Representative Hudson

To: Ways and Means

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 SHALL NOT BE INCLUDED WITHIN
4 THE MEANING OF GROSS PROCEEDS OF SALES FOR PURPOSES OF THE STATE
5 SALES TAX LAW; AND FOR RELATED PURPOSES.

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

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

9 27-65-3. The words, terms and phrases, when used in this
10 chapter, shall have the meanings ascribed to them herein.

11 (a) "Tax Commission" means the State Tax Commission of
12 the State of Mississippi.

13 (b) "Commissioner" means the Chairman of the State Tax
14 Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

76 "Gross proceeds of sales" shall include the value of any
77 goods, wares, merchandise or property purchased at wholesale or
78 manufactured, and any mineral or natural resources produced which
79 are excluded from the tax levied by Section 27-65-15, which are
80 withdrawn or used from an established business or from the stock
81 in trade for consumption or any other use in the business or by
82 the owner. However, "gross proceeds of sales" does not include
83 meals prepared by a restaurant and provided at no charge to
84 employees of the restaurant.

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

87 (i) "Gross income" means the total charges for service
88 or the total receipts (actual or accrued) derived from trades,
89 business or commerce by reason of the investment of capital in the
90 business engaged in, including the sale or rental of tangible
91 personal property, compensation for labor and services performed,
92 and including the receipts from the sales of property retained as
93 toll, without any deduction for rebates, cost of property sold,

94 cost of materials used, labor costs, interest paid, losses or any
95 expense whatever.

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

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

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

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

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

120 (i) Is not published primarily for advertising
121 purposes and has not contained more than seventy-five percent
122 (75%) advertising in more than one-half (1/2) of its issues during
123 any consecutive twelve-month period excluding separate advertising
124 supplements inserted into but separately identifiable from any
125 regular issue or issues;

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

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

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

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

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

149 The term "newspaper" shall include periodicals which are
150 designed primarily for free circulation or for circulation at
151 nominal rates as well as those which are designed for circulation
152 at more than a nominal rate.

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

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

174 **SECTION 2.** Nothing in this act shall affect or defeat any
175 claim, assessment, appeal, suit, right or cause of action for
176 taxes due or accrued under the sales tax laws before the date on
177 which this act becomes effective, whether such claims,
178 assessments, appeals, suits or actions have been begun before the
179 date on which this act becomes effective or are begun thereafter;
180 and the provisions of the sales tax laws are expressly continued
181 in full force, effect and operation for the purpose of the
182 assessment, collection and enrollment of liens for any taxes due
183 or accrued and the execution of any warrant under such laws before
184 the date on which this act becomes effective, and for the
185 imposition of any penalties, forfeitures or claims for failure to
186 comply with such laws.

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