

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.