

By: Representatives Snowden, Baker (74th)

To: Ways and Means

HOUSE BILL NO. 792

1 AN ACT TO AMEND SECTION 27-65-17, MISSISSIPPI CODE OF 1972,
2 TO REDUCE THE SALES TAX RATE ON RETAIL SALES OF FOOD FOR HUMAN
3 CONSUMPTION NOT PURCHASED WITH FOOD STAMPS BUT WHICH WOULD BE
4 EXEMPT FROM SALES TAX IF SUCH FOOD WERE PURCHASED WITH FOOD
5 STAMPS; TO AMEND SECTION 27-65-75, MISSISSIPPI CODE OF 1972, TO
6 PROVIDE THAT ALL OF THE SALES TAX COLLECTED ON SUCH RETAIL SALES
7 OF FOOD WITHIN A MUNICIPALITY SHALL BE ALLOCATED FOR DISTRIBUTION
8 AND PAID TO SUCH MUNICIPALITY; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 27-65-17, Mississippi Code of 1972, is
11 amended as follows:

12 27-65-17. (1) (a) Except as otherwise provided in this
13 section, upon every person engaging or continuing within this
14 state in the business of selling any tangible personal property
15 whatsoever there is hereby levied, assessed and shall be collected
16 a tax equal to seven percent (7%) of the gross proceeds of the
17 retail sales of the business.

18 (b) Retail sales of farm tractors shall be taxed at the
19 rate of one percent (1%) when made to farmers for agricultural
20 purposes.

21 (c) Retail sales of farm implements sold to farmers and
22 used directly in the production of poultry, ratite, domesticated
23 fish as defined in Section 69-7-501, livestock, livestock
24 products, agricultural crops or ornamental plant crops or used for
25 other agricultural purposes shall be taxed at the rate of three
26 percent (3%) when used on the farm. The three percent (3%) rate
27 shall also apply to all equipment used in logging, pulpwood
28 operations or tree farming which is either:

29 (i) Self-propelled, or

30 (ii) Mounted so that it is permanently attached to
31 other equipment which is self-propelled or permanently attached to
32 other equipment drawn by a vehicle which is self-propelled.

33 (d) Except as otherwise provided in subsection (3) of
34 this section, retail sales of aircraft, automobiles, trucks,
35 truck-tractors, semitrailers and mobile homes shall be taxed at
36 the rate of three percent (3%).

37 (e) Sales of manufacturing machinery or manufacturing
38 machine parts when made to a manufacturer or custom processor for
39 plant use only when the machinery and machine parts will be used
40 exclusively and directly within this state in manufacturing a
41 commodity for sale, rental or in processing for a fee shall be
42 taxed at the rate of one and one-half percent (1-1/2%).

43 (f) Sales of machinery and machine parts when made to a
44 technology intensive enterprise for plant use only when the
45 machinery and machine parts will be used exclusively and directly
46 within this state for industrial purposes, including, but not
47 limited to, manufacturing or research and development activities,
48 shall be taxed at the rate of one and one-half percent (1-1/2%).
49 In order to be considered a technology intensive enterprise for
50 purposes of this paragraph:

51 (i) The enterprise shall meet minimum criteria
52 established by the Mississippi Development Authority;

53 (ii) The enterprise shall employ at least ten (10)
54 persons in full-time jobs;

55 (iii) At least ten percent (10%) of the workforce
56 in the facility operated by the enterprise shall be scientists,
57 engineers or computer specialists;

58 (iv) The enterprise shall manufacture plastics,
59 chemicals, automobiles, aircraft, computers or electronics; or
60 shall be a research and development facility, a computer design or
61 related facility, or a software publishing facility or other

62 technology intensive facility or enterprise as determined by the
63 Mississippi Development Authority;

64 (v) The average wage of all workers employed by
65 the enterprise at the facility shall be at least one hundred fifty
66 percent (150%) of the state average annual wage; and

67 (vi) The enterprise must provide a basic health
68 care plan to all employees at the facility.

69 (g) Sales of materials for use in track and track
70 structures to a railroad whose rates are fixed by the Interstate
71 Commerce Commission or the Mississippi Public Service Commission
72 shall be taxed at the rate of three percent (3%).

73 (h) Sales of tangible personal property to electric
74 power associations for use in the ordinary and necessary operation
75 of their generating or distribution systems shall be taxed at the
76 rate of one percent (1%).

77 (i) Wholesale sales of beer shall be taxed at the rate
78 of seven percent (7%), and the retailer shall file a return and
79 compute the retail tax on retail sales but may take credit for the
80 amount of the tax paid to the wholesaler on said return covering
81 the subsequent sales of same property, provided adequate invoices
82 and records are maintained to substantiate the credit.

83 (j) Wholesale sales of food and drink for human
84 consumption to full service vending machine operators to be sold
85 through vending machines located apart from and not connected with
86 other taxable businesses shall be taxed at the rate of eight
87 percent (8%).

88 (k) Sales of equipment used or designed for the purpose
89 of assisting disabled persons, such as wheelchair equipment and
90 lifts, that is mounted or attached to or installed on a private
91 carrier of passengers or light carrier of property, as defined in
92 Section 27-51-101, at the time when the private carrier of
93 passengers or light carrier of property is sold shall be taxed at
94 the same rate as the sale of such vehicles under this section.

95 (2) From and after January 1, 1995, retail sales of private
96 carriers of passengers and light carriers of property, as defined
97 in Section 27-51-101, shall be taxed an additional two percent
98 (2%).

99 (3) In lieu of the tax levied in subsection (1) of this
100 section, there is levied on retail sales of truck-tractors and
101 semitrailers used in interstate commerce and registered under the
102 International Registration Plan (IRP) or any similar reciprocity
103 agreement or compact relating to the proportional registration of
104 commercial vehicles entered into as provided for in Section
105 27-19-143, a tax at the rate of three percent (3%) of the portion
106 of the sale that is attributable to the usage of such
107 truck-tractor or semitrailer in Mississippi. The portion of the
108 retail sale that is attributable to the usage of such
109 truck-tractor or semitrailer in Mississippi is the retail sales
110 price of the truck-tractor or semitrailer multiplied by the
111 percentage of the total miles traveled by the vehicle that are
112 traveled in Mississippi. The tax levied pursuant to this
113 subsection (3) shall be collected by the State Tax Commission from
114 the purchaser of such truck-tractor or semitrailer at the time of
115 registration of such truck-tractor or semitrailer.

116 (4) A manufacturer selling at retail in this state shall be
117 required to make returns of the gross proceeds of such sales and
118 pay the tax imposed in this section.

119 (5) Any person exercising any privilege taxable under
120 Section 27-65-15 and selling his natural resource products at
121 wholesale or to exempt persons shall pay the tax levied by said
122 section in lieu of the tax levied by this section.

123 (6) From and after July 1, 2006, in lieu of the tax levied
124 in subsection (1) of this section, retail sales of food for human
125 consumption not purchased with food stamps issued by the United
126 States Department of Agriculture, or other federal agency, but
127 which would be exempt under Section 27-65-111(o) from the taxes

128 imposed by this chapter if the food were purchased with food
129 stamps, shall be taxed as follows:

130 (a) From and after July 1, 2006, through June 30, 2008,
131 such sales shall be taxed at the rate of one and three-tenths
132 percent (1.3%);

133 (b) From and after July 1, 2008, such sales shall be
134 taxed at the rate of one percent (1%).

135 **SECTION 2.** Section 27-65-75, Mississippi Code of 1972, is
136 amended as follows:

137 27-65-75. On or before the fifteenth day of each month, the
138 revenue collected under the provisions of this chapter during the
139 preceding month shall be paid and distributed as follows:

140 (1) On or before August 15, 1992, and each succeeding month
141 thereafter through July 15, 1993, eighteen percent (18%) of the
142 total sales tax revenue collected during the preceding month under
143 the provisions of this chapter, except that collected under the
144 provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on
145 business activities within a municipal corporation shall be
146 allocated for distribution to the municipality and paid to the
147 municipal corporation. On or before August 15, 1993, and each
148 succeeding month thereafter, through July 15, 2006, eighteen and
149 one-half percent (18-1/2%) of the total sales tax revenue
150 collected during the preceding month under the provisions of this
151 chapter, except that collected under the provisions of Sections
152 27-65-15, 27-65-19(3) and 27-65-21, on business activities within
153 a municipal corporation shall be allocated for distribution to the
154 municipality and paid to the municipal corporation. On or before
155 August 15, 2006, and each succeeding month thereafter, eighteen
156 and one-half percent (18-1/2%) of the total sales tax revenue
157 collected during the preceding month under the provisions of this
158 chapter, except that collected under the provisions of Sections
159 27-65-15, 27-65-19(3), 27-65-21 and 27-65-17(6), on business
160 activities within a municipal corporation and all of the sales tax

161 revenue collected during the preceding month under the provisions
162 of Section 27-65-17(6) on business activities within a municipal
163 corporation shall be allocated for distribution to such
164 municipality and paid to such municipal corporation.

165 A municipal corporation, for the purpose of distributing the
166 tax under this subsection, shall mean and include all incorporated
167 cities, towns and villages.

168 Monies allocated for distribution and credited to a municipal
169 corporation under this subsection may be pledged as security for a
170 loan if the distribution received by the municipal corporation is
171 otherwise authorized or required by law to be pledged as security
172 for such a loan.

173 In any county having a county seat that is not an
174 incorporated municipality, the distribution provided under this
175 subsection shall be made as though the county seat was an
176 incorporated municipality; however, the distribution to the
177 municipality shall be paid to the county treasury in which the
178 municipality is located, and those funds shall be used for road,
179 bridge and street construction or maintenance in the county.

180 (2) On or before September 15, 1987, and each succeeding
181 month thereafter, from the revenue collected under this chapter
182 during the preceding month, One Million One Hundred Twenty-five
183 Thousand Dollars (\$1,125,000.00) shall be allocated for
184 distribution to municipal corporations as defined under subsection
185 (1) of this section in the proportion that the number of gallons
186 of gasoline and diesel fuel sold by distributors to consumers and
187 retailers in each such municipality during the preceding fiscal
188 year bears to the total gallons of gasoline and diesel fuel sold
189 by distributors to consumers and retailers in municipalities
190 statewide during the preceding fiscal year. The State Tax
191 Commission shall require all distributors of gasoline and diesel
192 fuel to report to the commission monthly the total number of
193 gallons of gasoline and diesel fuel sold by them to consumers and

194 retailers in each municipality during the preceding month. The
195 State Tax Commission shall have the authority to promulgate such
196 rules and regulations as is necessary to determine the number of
197 gallons of gasoline and diesel fuel sold by distributors to
198 consumers and retailers in each municipality. In determining the
199 percentage allocation of funds under this subsection for the
200 fiscal year beginning July 1, 1987, and ending June 30, 1988, the
201 State Tax Commission may consider gallons of gasoline and diesel
202 fuel sold for a period of less than one (1) fiscal year. For the
203 purposes of this subsection, the term "fiscal year" means the
204 fiscal year beginning July 1 of a year.

205 (3) On or before September 15, 1987, and on or before the
206 fifteenth day of each succeeding month, until the date specified
207 in Section 65-39-35, the proceeds derived from contractors' taxes
208 levied under Section 27-65-21 on contracts for the construction or
209 reconstruction of highways designated under the highway program
210 created under Section 65-3-97 shall, except as otherwise provided
211 in Section 31-17-127, be deposited into the State Treasury to the
212 credit of the State Highway Fund to be used to fund that highway
213 program. The Mississippi Department of Transportation shall
214 provide to the State Tax Commission such information as is
215 necessary to determine the amount of proceeds to be distributed
216 under this subsection.

217 (4) On or before August 15, 1994, and on or before the
218 fifteenth day of each succeeding month through July 15, 1999, from
219 the proceeds of gasoline, diesel fuel or kerosene taxes as
220 provided in Section 27-5-101(a)(ii)1, Four Million Dollars
221 (\$4,000,000.00) shall be deposited in the State Treasury to the
222 credit of a special fund designated as the "State Aid Road Fund,"
223 created by Section 65-9-17. On or before August 15, 1999, and on
224 or before the fifteenth day of each succeeding month, from the
225 total amount of the proceeds of gasoline, diesel fuel or kerosene
226 taxes apportioned by Section 27-5-101(a)(ii)1, Four Million

227 Dollars (\$4,000,000.00) or an amount equal to twenty-three and
228 one-fourth percent (23-1/4%) of those funds, whichever is the
229 greater amount, shall be deposited in the State Treasury to the
230 credit of the "State Aid Road Fund," created by Section 65-9-17.
231 Those funds shall be pledged to pay the principal of and interest
232 on state aid road bonds heretofore issued under Sections 19-9-51
233 through 19-9-77, in lieu of and in substitution for the funds
234 previously allocated to counties under this section. Those funds
235 may not be pledged for the payment of any state aid road bonds
236 issued after April 1, 1981; however, this prohibition against the
237 pledging of any such funds for the payment of bonds shall not
238 apply to any bonds for which intent to issue those bonds has been
239 published, for the first time, as provided by law before March 29,
240 1981. From the amount of taxes paid into the special fund under
241 this subsection and subsection (9) of this section, there shall be
242 first deducted and paid the amount necessary to pay the expenses
243 of the Office of State Aid Road Construction, as authorized by the
244 Legislature for all other general and special fund agencies. The
245 remainder of the fund shall be allocated monthly to the several
246 counties in accordance with the following formula:

247 (a) One-third (1/3) shall be allocated to all counties
248 in equal shares;

249 (b) One-third (1/3) shall be allocated to counties
250 based on the proportion that the total number of rural road miles
251 in a county bears to the total number of rural road miles in all
252 counties of the state; and

253 (c) One-third (1/3) shall be allocated to counties
254 based on the proportion that the rural population of the county
255 bears to the total rural population in all counties of the state,
256 according to the latest federal decennial census.

257 For the purposes of this subsection, the term "gasoline,
258 diesel fuel or kerosene taxes" means such taxes as defined in
259 paragraph (f) of Section 27-5-101.

260 The amount of funds allocated to any county under this
261 subsection for any fiscal year after fiscal year 1994 shall not be
262 less than the amount allocated to the county for fiscal year 1994.

263 Any reference in the general laws of this state or the
264 Mississippi Code of 1972 to Section 27-5-105 shall mean and be
265 construed to refer and apply to subsection (4) of Section
266 27-65-75.

267 (5) One Million Six Hundred Sixty-six Thousand Six Hundred
268 Sixty-six Dollars (\$1,666,666.00) each month shall be paid into
269 the special fund known as the "State Public School Building Fund"
270 created and existing under the provisions of Sections 37-47-1
271 through 37-47-67. Those payments into that fund are to be made on
272 the last day of each succeeding month hereafter.

273 (6) An amount each month beginning August 15, 1983, through
274 November 15, 1986, as specified in Section 6 of Chapter 542, Laws
275 of 1983, shall be paid into the special fund known as the
276 Correctional Facilities Construction Fund created in Section 6 of
277 Chapter 542, Laws of 1983.

278 (7) On or before August 15, 1992, and each succeeding month
279 thereafter through July 15, 2000, two and two hundred sixty-six
280 one-thousandths percent (2.266%) of the total sales tax revenue
281 collected during the preceding month under the provisions of this
282 chapter, except that collected under the provisions of Section
283 27-65-17(2) shall be deposited by the commission into the School
284 Ad Valorem Tax Reduction Fund created under Section 37-61-35. On
285 or before August 15, 2000, and each succeeding month thereafter,
286 two and two hundred sixty-six one-thousandths percent (2.266%) of
287 the total sales tax revenue collected during the preceding month
288 under the provisions of this chapter, except that collected under
289 the provisions of Section 27-65-17(2), shall be deposited into the
290 School Ad Valorem Tax Reduction Fund created under Section
291 37-61-35 until such time that the total amount deposited into the
292 fund during a fiscal year equals Forty-two Million Dollars

293 (\$42,000,000.00). Thereafter, the amounts diverted under this
294 subsection (7) during the fiscal year in excess of Forty-two
295 Million Dollars (\$42,000,000.00) shall be deposited into the
296 Education Enhancement Fund created under Section 37-61-33 for
297 appropriation by the Legislature as other education needs and
298 shall not be subject to the percentage appropriation requirements
299 set forth in Section 37-61-33.

300 (8) On or before August 15, 1992, and each succeeding month
301 thereafter, nine and seventy-three one-thousandths percent
302 (9.073%) of the total sales tax revenue collected during the
303 preceding month under the provisions of this chapter, except that
304 collected under the provisions of Section 27-65-17(2), shall be
305 deposited into the Education Enhancement Fund created under
306 Section 37-61-33.

307 (9) On or before August 15, 1994, and each succeeding month
308 thereafter, from the revenue collected under this chapter during
309 the preceding month, Two Hundred Fifty Thousand Dollars
310 (\$250,000.00) shall be paid into the State Aid Road Fund.

311 (10) On or before August 15, 1994, and each succeeding month
312 thereafter through August 15, 1995, from the revenue collected
313 under this chapter during the preceding month, Two Million Dollars
314 (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad
315 Valorem Tax Reduction Fund established in Section 27-51-105.

316 (11) Notwithstanding any other provision of this section to
317 the contrary, on or before February 15, 1995, and each succeeding
318 month thereafter, the sales tax revenue collected during the
319 preceding month under the provisions of Section 27-65-17(2) and
320 the corresponding levy in Section 27-65-23 on the rental or lease
321 of private carriers of passengers and light carriers of property
322 as defined in Section 27-51-101 shall be deposited, without
323 diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund
324 established in Section 27-51-105.

325 (12) Notwithstanding any other provision of this section to
326 the contrary, on or before August 15, 1995, and each succeeding
327 month thereafter, the sales tax revenue collected during the
328 preceding month under the provisions of Section 27-65-17(1) on
329 retail sales of private carriers of passengers and light carriers
330 of property, as defined in Section 27-51-101 and the corresponding
331 levy in Section 27-65-23 on the rental or lease of these vehicles,
332 shall be deposited, after diversion, into the Motor Vehicle Ad
333 Valorem Tax Reduction Fund established in Section 27-51-105.

334 (13) On or before July 15, 1994, and on or before the
335 fifteenth day of each succeeding month thereafter, that portion of
336 the avails of the tax imposed in Section 27-65-22 that is derived
337 from activities held on the Mississippi state fairgrounds complex,
338 shall be paid into a special fund that is created in the State
339 Treasury and shall be expended upon legislative appropriation
340 solely to defray the costs of repairs and renovation at the Trade
341 Mart and Coliseum.

342 (14) On or before August 15, 1998, and each succeeding month
343 thereafter through July 15, 2005, that portion of the avails of
344 the tax imposed in Section 27-65-23 that is derived from sales by
345 cotton compresses or cotton warehouses and that would otherwise be
346 paid into the General Fund, shall be deposited in an amount not to
347 exceed Two Million Dollars (\$2,000,000.00) into the special fund
348 created under Section 69-37-39.

349 (15) Notwithstanding any other provision of this section to
350 the contrary, on or before September 15, 2000, and each succeeding
351 month thereafter, the sales tax revenue collected during the
352 preceding month under the provisions of Section 27-65-19(1)(f) and
353 (g)(i)2, shall be deposited, without diversion, into the
354 Telecommunications Ad Valorem Tax Reduction Fund established in
355 Section 27-38-7.

356 (16) On or before August 15, 2000, and each succeeding month
357 thereafter, the sales tax revenue collected during the preceding

358 month under the provisions of this chapter on the gross proceeds
359 of sales of a project as defined in Section 57-30-1 shall be
360 deposited, after all diversions except the diversion provided for
361 in subsection (1) of this section, into the Sales Tax Incentive
362 Fund created in Section 57-30-3.

363 (17) Notwithstanding any other provision of this section to
364 the contrary, on or before April 15, 2002, and each succeeding
365 month thereafter, the sales tax revenue collected during the
366 preceding month under Section 27-65-23 on sales of parking
367 services of parking garages and lots at airports shall be
368 deposited, without diversion, into the special fund created under
369 Section 27-5-101(d).

370 (18) On or before August 15, 2007, and each succeeding month
371 thereafter through July 15, 2008, from the sales tax revenue
372 collected during the preceding month under the provisions of this
373 chapter, Two Million Five Hundred Thousand Dollars (\$2,500,000.00)
374 shall be deposited into the Special Funds Transfer Fund created in
375 Section 4 of Chapter 556, Laws of 2003.

376 (19) (a) On or before August 15, 2005, and each succeeding
377 month thereafter, the sales tax revenue collected during the
378 preceding month under the provisions of this chapter on the gross
379 proceeds of sales of a business enterprise located within a
380 redevelopment project area under the provisions of Sections
381 57-91-1 through 57-91-11, and the revenue collected on the gross
382 proceeds of sales from sales made to a business enterprise located
383 in a redevelopment project area under the provisions of Sections
384 57-91-1 through 57-91-11 (provided that such sales made to a
385 business enterprise are made on the premises of the business
386 enterprise), shall, except as otherwise provided in this
387 subsection (19), be deposited, after all diversions, into the
388 Redevelopment Project Incentive Fund as created in Section
389 57-91-9.

390 (b) For a municipality participating in the Economic
391 Redevelopment Act created in Sections 57-91-1 through 57-91-11,
392 the diversion provided for in subsection (1) of this section
393 attributable to the gross proceeds of sales of a business
394 enterprise located within a redevelopment project area under the
395 provisions of Sections 57-91-1 through 57-91-11, and attributable
396 to the gross proceeds of sales from sales made to a business
397 enterprise located in a redevelopment project area under the
398 provisions of Sections 57-91-1 through 57-91-11 (provided that
399 such sales made to a business enterprise are made on the premises
400 of the business enterprise), shall be deposited into the
401 Redevelopment Project Incentive Fund as created in Section
402 57-91-9, as follows:

403 (i) For the first six (6) years in which payments
404 are made to a developer from the Redevelopment Project Incentive
405 Fund, one hundred percent (100%) of the diversion shall be
406 deposited into the fund;

407 (ii) For the seventh year in which such payments
408 are made to a developer from the Redevelopment Project Incentive
409 Fund, eighty percent (80%) of the diversion shall be deposited
410 into the fund;

411 (iii) For the eighth year in which such payments
412 are made to a developer from the Redevelopment Project Incentive
413 Fund, seventy percent (70%) of the diversion shall be deposited
414 into the fund;

415 (iv) For the ninth year in which such payments are
416 made to a developer from the Redevelopment Project Incentive Fund,
417 sixty percent (60%) of the diversion shall be deposited into the
418 fund; and

419 (v) For the tenth year in which such payments are
420 made to a developer from the Redevelopment Project Incentive Fund,
421 fifty percent (50%) of the funds shall be deposited into the fund.

422 (20) The remainder of the amounts collected under the
423 provisions of this chapter shall be paid into the State Treasury
424 to the credit of the General Fund.

425 (21) It shall be the duty of the municipal officials of any
426 municipality that expands its limits, or of any community that
427 incorporates as a municipality, to notify the commissioner of that
428 action thirty (30) days before the effective date. Failure to so
429 notify the commissioner shall cause the municipality to forfeit
430 the revenue that it would have been entitled to receive during
431 this period of time when the commissioner had no knowledge of the
432 action. If any funds have been erroneously disbursed to any
433 municipality or any overpayment of tax is recovered by the
434 taxpayer, the commissioner may make correction and adjust the
435 error or overpayment with the municipality by withholding the
436 necessary funds from any later payment to be made to the
437 municipality.

438 **SECTION 3.** Nothing in this act shall affect or defeat any
439 claim, assessment, appeal, suit, right or cause of action for
440 taxes due or accrued under the sales tax laws before the date on
441 which this act becomes effective, whether such claims,
442 assessments, appeals, suits or actions have been begun before the
443 date on which this act becomes effective or are begun thereafter;
444 and the provisions of the sales tax laws are expressly continued
445 in full force, effect and operation for the purpose of the
446 assessment, collection and enrollment of liens for any taxes due
447 or accrued and the execution of any warrant under such laws before
448 the date on which this act becomes effective, and for the
449 imposition of any penalties, forfeitures or claims for failure to
450 comply with such laws.

451 **SECTION 4.** This act shall take effect and be in force from
452 and after July 1, 2006.