

By: Representative Watson

To: Ways and Means

## HOUSE BILL NO. 1499

1 AN ACT TO AMEND SECTION 27-65-5, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT "WHOLESALE SALES" UNDER THE SALES TAX LAW APPLY TO  
3 SALES OF BOXES, CRATES, CARTONS, CANS, BOTTLES AND OTHER PACKAGING  
4 MATERIALS TO A RETAILER OR RETAIL CUSTOM PROCESSOR FOR USE AS A  
5 CONTAINER TO ACCOMPANY GOODS SOLD BY THE RETAILER OR CUSTOM  
6 PROCESSOR, WHERE OWNERSHIP, RATHER THAN POSSESSION, OF THE BOXES,  
7 CRATES, CARTONS, CANS, BOTTLES AND OTHER PACKAGING MATERIALS  
8 PASSES TO THE CUSTOMER AT THE TIME OF SALE; AND FOR RELATED  
9 PURPOSES.

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

11 **SECTION 1.** Section 27-65-5, Mississippi Code of 1972, is  
12 amended as follows:

13 27-65-5. "Wholesaler," "jobber" or "distributor" means a  
14 person doing a regularly organized wholesale or jobbing business,  
15 known to the trade as such, and selling to licensed retail dealers  
16 or other wholesalers for resale in the regular course of business.  
17 This classification has no bearing on rates of tax due under this  
18 chapter, each sale or part of sales being taxable or exempt  
19 depending upon the class in which it falls.

20 "Wholesale sales" shall apply to:

21 (1) A sale of tangible personal property taxable under  
22 Sections 27-65-17 and 27-65-25 for resale in the regular line of  
23 business, when made in good faith to a retailer regularly selling  
24 or renting that property and when said dealer is licensed under  
25 Section 27-65-27 of this chapter if located in this state.

26 A sale of a service taxable under Section 27-65-23 for resale  
27 in the regular line of business, when made to a regular dealer in  
28 that service and when said dealer is licensed under Section  
29 27-65-27 of this chapter if located in this state, or a charge for

30 custom processing rendered upon merchandise for resale or rental  
31 by a dealer licensed under Section 27-65-27.

32 A sale of telecommunications services taxable under Section  
33 27-65-19 for resale in the regular course of business, when made  
34 to a regular telecommunications provider of such service and such  
35 provider is the holder of a permit issued under Section 27-65-27  
36 and is located in this state or is providing telecommunications  
37 services in this state.

38 "Wholesale sale" shall not include a transaction whereby  
39 property is delivered to and collection for same is made from a  
40 person that will consume the property rather than resell it even  
41 though the billing is to a retailer.

42 Provided, however, that when a taxpayer sells merchandise and  
43 has paid a rate equal to the retail rate of tax on the purchase  
44 price to a wholesaler, the taxpayer may take credit for the tax  
45 paid to the wholesaler from the tax due on the sale of the  
46 merchandise specifically included in his return to the  
47 commissioner.

48 (2) A sale of tangible personal property (except sand  
49 or gravel when sold by the producer thereof) or service which is  
50 to become a component part of a structure or improvement erected,  
51 constructed, repaired, or made only when such sale is made to a  
52 contractor taxable under Section 27-65-21 of this chapter on the  
53 contract in which the component materials are to be used; and only  
54 when the contractor holds a material purchase certificate as  
55 required by Section 27-65-21 of this chapter.

56 (3) A sale of boxes, crates, cartons, cans, bottles and  
57 other packaging materials to a retailer or retail custom processor  
58 for use as a container to accompany goods or services sold by said  
59 retailer or custom processor where ownership thereof will pass to  
60 the customer at the time of sale of the goods or services  
61 contained therein.

62           (4) The value of soft drinks and syrup withdrawn from  
63 the business by a manufacturer for sale at retail and food or  
64 drink withdrawn by a manufacturer or wholesaler to be sold through  
65 full service vending machines for human consumption.

66           The quantity of property or services sold or the price at  
67 which sold is immaterial in determining whether or not a sale is  
68 at wholesale. Sales may be classed as wholesale, or exempt, only  
69 if evidenced by proper and adequate records and invoices to  
70 substantiate the wholesale rate or exemption from the tax on each  
71 individual sale.

72           The substantiation of the wholesale sales must be by an  
73 invoice clearly indicating the date, the name and address of the  
74 vendor and vendee, the items sold and the price thereof. Such  
75 proof of wholesale sales shall be filed in chronological order and  
76 thus preserved for a period of three (3) years from the date of  
77 sale. These records shall be subject to inspection by the  
78 commissioner and his agents, at their discretion, for the  
79 verification of returns filed by either the wholesaler or his  
80 customers.

81           The substantiation of an exempt sale must be by an invoice  
82 containing the same information as required for the wholesale  
83 sales. This requirement shall apply equally to a retailer making  
84 wholesale or exempt sales.

85           Any failure to comply with all the above requirements shall  
86 subject the violator to the retail rate of tax on all such  
87 violations.

88           **SECTION 2.** This act shall take effect and be in force from  
89 and after July 1, 2006.