

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2449

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.