

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 3002

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 OF THE GOODS OR
 9 SERVICES CONTAINED THEREIN; TO AMEND SECTION 27-65-101,
 10 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT SALES OF BOXES, CRATES,
 11 CARTONS, CANS, BOTTLES AND OTHER PACKAGING MATERIALS TO A RETAILER
 12 OR RETAIL CUSTOM PROCESSOR FOR USE AS A CONTAINER OR SHIPPING
 13 MATERIAL TO ACCOMPANY GOODS SOLD BY THE MANUFACTURER OR
 14 WHOLESALE, WHERE OWNERSHIP, RATHER THAN POSSESSION, OF THE BOXES,
 15 CRATES, CARTONS, CANS, BOTTLES AND OTHER PACKAGING MATERIALS
 16 PASSES TO THE CUSTOMER AT THE TIME OF SALE OF THE GOODS CONTAINED
 17 THEREIN, SHALL BE EXEMPT FROM SALES TAXATION; AND FOR RELATED
 18 PURPOSES.

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

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

22 27-65-5. "Wholesaler," "jobber" or "distributor" means a
 23 person doing a regularly organized wholesale or jobbing business,
 24 known to the trade as such, and selling to licensed retail dealers
 25 or other wholesalers for resale in the regular course of business.
 26 This classification has no bearing on rates of tax due under this
 27 chapter, each sale or part of sales being taxable or exempt
 28 depending upon the class in which it falls.

29 "Wholesale sales" shall apply to:

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

35 A sale of a service taxable under Section 27-65-23 for resale
36 in the regular line of business, when made to a regular dealer in
37 that service and when said dealer is licensed under Section
38 27-65-27 of this chapter if located in this state, or a charge for
39 custom processing rendered upon merchandise for resale or rental
40 by a dealer licensed under Section 27-65-27.

41 A sale of telecommunications services taxable under Section
42 27-65-19 for resale in the regular course of business, when made
43 to a regular telecommunications provider of such service and such
44 provider is the holder of a permit issued under Section 27-65-27
45 and is located in this state or is providing telecommunications
46 services in this state.

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

51 Provided, however, that when a taxpayer sells merchandise and
52 has paid a rate equal to the retail rate of tax on the purchase
53 price to a wholesaler, the taxpayer may take credit for the tax
54 paid to the wholesaler from the tax due on the sale of the
55 merchandise specifically included in his return to the
56 commissioner.

57 (2) A sale of tangible personal property (except sand
58 or gravel when sold by the producer thereof) or service which is
59 to become a component part of a structure or improvement erected,
60 constructed, repaired, or made only when such sale is made to a
61 contractor taxable under Section 27-65-21 of this chapter on the
62 contract in which the component materials are to be used; and only
63 when the contractor holds a material purchase certificate as
64 required by Section 27-65-21 of this chapter.

65 (3) A sale of boxes, crates, cartons, cans, bottles and
66 other packaging materials to a retailer or retail custom processor
67 for use as a container to accompany goods or services sold by said

68 retailer or custom processor where ownership thereof will pass to
69 the customer at the time of sale of the goods or services
70 contained therein.

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

75 The quantity of property or services sold or the price at
76 which sold is immaterial in determining whether or not a sale is
77 at wholesale. Sales may be classed as wholesale, or exempt, only
78 if evidenced by proper and adequate records and invoices to
79 substantiate the wholesale rate or exemption from the tax on each
80 individual sale.

81 The substantiation of the wholesale sales must be by an
82 invoice clearly indicating the date, the name and address of the
83 vendor and vendee, the items sold and the price thereof. Such
84 proof of wholesale sales shall be filed in chronological order and
85 thus preserved for a period of three (3) years from the date of
86 sale. These records shall be subject to inspection by the
87 commissioner and his agents, at their discretion, for the
88 verification of returns filed by either the wholesaler or his
89 customers.

90 The substantiation of an exempt sale must be by an invoice
91 containing the same information as required for the wholesale
92 sales. This requirement shall apply equally to a retailer making
93 wholesale or exempt sales.

94 Any failure to comply with all the above requirements shall
95 subject the violator to the retail rate of tax on all such
96 violations.

97 **SECTION 2.** Section 27-65-101, Mississippi Code of 1972, is
98 amended as follows:

99 27-65-101. (1) The exemptions from the provisions of this
100 chapter which are of an industrial nature or which are more

101 properly classified as industrial exemptions than any other
102 exemption classification of this chapter shall be confined to
103 those persons or property exempted by this section or by the
104 provisions of the Constitution of the United States or the State
105 of Mississippi. No industrial exemption as now provided by any
106 other section except Section 57-3-33 shall be valid as against the
107 tax herein levied. Any subsequent industrial exemption from the
108 tax levied hereunder shall be provided by amendment to this
109 section. No exemption provided in this section shall apply to
110 taxes levied by Section 27-65-15 or 27-65-21.

111 The tax levied by this chapter shall not apply to the
112 following:

113 (a) Sales of boxes, crates, cartons, cans, bottles and
114 other packaging materials to manufacturers and wholesalers for use
115 as containers or shipping materials to accompany goods sold by
116 said manufacturers or wholesalers where ownership thereof will
117 pass to the customer at the time of sale of the goods contained
118 therein and sales to anyone of containers or shipping materials
119 for use in ships engaged in international commerce.

120 (b) Sales of raw materials, catalysts, processing
121 chemicals, welding gases or other industrial processing gases
122 (except natural gas) to a manufacturer for use directly in
123 manufacturing or processing a product for sale or rental or
124 repairing or reconditioning vessels or barges of fifty (50) tons
125 load displacement and over. For the purposes of this exemption,
126 electricity used directly in the electrolysis process in the
127 production of sodium chlorate shall be considered a raw material.
128 This exemption shall not apply to any property used as fuel except
129 to the extent that such fuel comprises by-products which have no
130 market value.

131 (c) The gross proceeds of sales of dry docks, offshore
132 drilling equipment for use in oil exploitation or production,

133 vessels or barges of fifty (50) tons load displacement and over,
134 when sold by the manufacturer or builder thereof.

135 (d) Sales to commercial fishermen of commercial fishing
136 boats of over five (5) tons load displacement and not more than
137 fifty (50) tons load displacement as registered with the United
138 States Coast Guard and licensed by the Mississippi Commission on
139 Marine Resources.

140 (e) The gross income from repairs to vessels and barges
141 engaged in foreign trade or interstate transportation.

142 (f) Sales of petroleum products to vessels or barges
143 for consumption in marine international commerce or interstate
144 transportation businesses.

145 (g) Sales and rentals of rail rolling stock (and
146 component parts thereof) for ultimate use in interstate commerce
147 and gross income from services with respect to manufacturing,
148 repairing, cleaning, altering, reconditioning or improving such
149 rail rolling stock (and component parts thereof).

150 (h) Sales of raw materials, catalysts, processing
151 chemicals, welding gases or other industrial processing gases
152 (except natural gas) used or consumed directly in manufacturing,
153 repairing, cleaning, altering, reconditioning or improving such
154 rail rolling stock (and component parts thereof). This exemption
155 shall not apply to any property used as fuel.

156 (i) Sales of machinery or tools or repair parts
157 therefor or replacements thereof, fuel or supplies used directly
158 in manufacturing, converting or repairing ships, vessels or barges
159 of three thousand (3,000) tons load displacement and over, but not
160 to include office and plant supplies or other equipment not
161 directly used on the ship, vessel or barge being built, converted
162 or repaired. For purposes of this exemption, "ships, vessels or
163 barges" shall not include floating structures described in Section
164 27-65-18.

165 (j) Sales of tangible personal property to persons
166 operating ships in international commerce for use or consumption
167 on board such ships. This exemption shall be limited to cases in
168 which procedures satisfactory to the commissioner, ensuring
169 against use in this state other than on such ships, are
170 established.

171 (k) Sales of materials used in the construction of a
172 building, or any addition or improvement thereon, and sales of any
173 machinery and equipment not later than three (3) months after the
174 completion of construction of the building, or any addition
175 thereon, to be used therein, to qualified businesses, as defined
176 in Section 57-51-5, which are located in a county or portion
177 thereof designated as an enterprise zone pursuant to Sections
178 57-51-1 through 57-51-15.

179 (l) Sales of materials used in the construction of a
180 building, or any addition or improvement thereon, and sales of any
181 machinery and equipment not later than three (3) months after the
182 completion of construction of the building, or any addition
183 thereon, to be used therein, to qualified businesses, as defined
184 in Section 57-54-5.

185 (m) Income from storage and handling of perishable
186 goods by a public storage warehouse.

187 (n) The value of natural gas lawfully injected into the
188 earth for cycling, repressuring or lifting of oil, or lawfully
189 vented or flared in connection with the production of oil;
190 however, if any gas so injected into the earth is sold for such
191 purposes, then the gas so sold shall not be exempt.

192 (o) The gross collections from self-service commercial
193 laundering, drying, cleaning and pressing equipment.

194 (p) Sales of materials used in the construction of a
195 building, or any addition or improvement thereon, and sales of any
196 machinery and equipment not later than three (3) months after the
197 completion of construction of the building, or any addition

198 thereon, to be used therein, to qualified companies, certified as
199 such by the Mississippi Development Authority under Section
200 57-53-1.

201 (q) Sales of component materials used in the
202 construction of a building, or any addition or improvement
203 thereon, sales of machinery and equipment to be used therein, and
204 sales of manufacturing or processing machinery and equipment which
205 is permanently attached to the ground or to a permanent foundation
206 and which is not by its nature intended to be housed within a
207 building structure, not later than three (3) months after the
208 initial start-up date, to permanent business enterprises engaging
209 in manufacturing or processing in Tier Three areas (as such term
210 is defined in Section 57-73-21), which businesses are certified by
211 the State Tax Commission as being eligible for the exemption
212 granted in this paragraph (q).

213 (r) Sales of component materials used in the
214 construction of a building, or any addition or improvement
215 thereon, and sales of any machinery and equipment not later than
216 three (3) months after the completion of the building, addition or
217 improvement thereon, to be used therein, for any company
218 establishing or transferring its national or regional headquarters
219 from within or outside the State of Mississippi and creating a
220 minimum of thirty-five (35) jobs at the new headquarters in this
221 state. The Tax Commission shall establish criteria and prescribe
222 procedures to determine if a company qualifies as a national or
223 regional headquarters for the purpose of receiving the exemption
224 provided in this paragraph.

225 (s) The gross proceeds from the sale of semitrailers,
226 trailers, boats, travel trailers, motorcycles and all-terrain
227 cycles if exported from this state within forty-eight (48) hours
228 and registered and first used in another state.

229 (t) Gross income from the storage and handling of
230 natural gas in underground salt domes and in other underground

231 reservoirs, caverns, structures and formations suitable for such
232 storage.

233 (u) Sales of machinery and equipment to nonprofit
234 organizations if the organization:

235 (i) Is tax-exempt pursuant to Section 501(c)(4) of
236 the Internal Revenue Code of 1986, as amended;

237 (ii) Assists in the implementation of the national
238 contingency plan or area contingency plan, and which is created in
239 response to the requirements of Title IV, Subtitle B of the Oil
240 Pollution Act of 1990, Public Law 101-380; and

241 (iii) Engages primarily in programs to contain,
242 clean up and otherwise mitigate spills of oil or other substances
243 occurring in the United States coastal and tidal waters.

244 For purposes of this exemption, "machinery and equipment"
245 means any ocean-going vessels, barges, booms, skimmers and other
246 capital equipment used primarily in the operations of nonprofit
247 organizations referred to herein.

248 (v) Sales or leases of materials and equipment to
249 approved business enterprises as provided under the Growth and
250 Prosperity Act.

251 (w) From and after July 1, 2001, sales of pollution
252 control equipment to manufacturers or custom processors for
253 industrial use. For the purposes of this exemption, "pollution
254 control equipment" means equipment, devices, machinery or systems
255 used or acquired to prevent, control, monitor or reduce air, water
256 or groundwater pollution, or solid or hazardous waste as required
257 by federal or state law or regulation.

258 (x) Sales or leases to a manufacturer of motor vehicles
259 operating a project that has been certified by the Mississippi
260 Major Economic Impact Authority as a project as defined in Section
261 57-75-5(f)(iv)1 of machinery and equipment; special tooling such
262 as dies, molds, jigs and similar items treated as special tooling
263 for federal income tax purposes; or repair parts therefor or

264 replacements thereof; repair services thereon; fuel, supplies,
265 electricity, coal and natural gas used directly in the manufacture
266 of motor vehicles or motor vehicle parts or used to provide
267 climate control for manufacturing areas.

268 (y) Sales or leases of component materials, machinery
269 and equipment used in the construction of a building, or any
270 addition or improvement thereon to an enterprise operating a
271 project that has been certified by the Mississippi Major Economic
272 Impact Authority as a project as defined in Section
273 57-75-5(f)(iv)1 and any other sales or leases required to
274 establish or operate such project.

275 (z) Sales of component materials and equipment to a
276 business enterprise as provided under Section 57-64-33.

277 (aa) The gross income from the stripping and painting
278 of commercial aircraft engaged in foreign or interstate
279 transportation business.

280 (bb) Sales of production items used in the production
281 of motion pictures such as film; videotape; component building
282 materials used in the construction of a set; makeup; fabric used
283 as or in the making of costumes; clothing, including, shoes,
284 accessories and jewelry used as wardrobes; materials used as set
285 dressing; materials used as props on a set or by an actor;
286 materials used in the creation of special effects; and expendable
287 items purchased for limited use by grip, electric and camera
288 departments such as tape, fasteners and compressed air. For the
289 purposes of this paragraph (bb), the term "motion picture" means a
290 nationally distributed feature-length film, video, television
291 series or commercial made in Mississippi, in whole or in part, for
292 theatrical or television viewing or as a television pilot. The
293 term "motion picture" shall not include the production of
294 television coverage of news and athletic events, or a film, video,
295 television series or commercial that contains any material or
296 performance defined in Section 97-29-103.

297 (cc) Sales or leases to an enterprise owning or
298 operating a project that has been designated by the Mississippi
299 Major Economic Impact Authority as a project as defined in Section
300 57-75-5(f)(xviii) of machinery and equipment; special tooling such
301 as dies, molds, jigs and similar items treated as special tooling
302 for federal income tax purposes; or repair parts therefor or
303 replacements thereof; repair services thereon; fuel, supplies,
304 electricity, coal and natural gas used directly in the
305 manufacturing/production operations of the project or used to
306 provide climate control for manufacturing/production areas.

307 (dd) Sales or leases of component materials, machinery
308 and equipment used in the construction of a building, or any
309 addition or improvement thereon to an enterprise owning or
310 operating a project that has been designated by the Mississippi
311 Major Economic Impact Authority as a project as defined in Section
312 57-75-5(f)(xviii) and any other sales or leases required to
313 establish or operate such project.

314 (ee) Sales of parts used in the repair and servicing of
315 aircraft not registered in Mississippi engaged exclusively in the
316 business of foreign or interstate transportation to businesses
317 engaged in aircraft repair and maintenance.

318 (ff) Sales of component materials used in the
319 construction of a facility, or any addition or improvement
320 thereon, and sales or leases of machinery and equipment not later
321 than three (3) months after the completion of construction of the
322 facility, or any addition or improvement thereto, to be used in
323 the building or any addition or improvement thereto, to a
324 permanent business enterprise operating a data/information
325 enterprise in Tier Three areas (as such areas are designated in
326 accordance with Section 57-73-21), meeting minimum criteria
327 established by the Mississippi Development Authority.

328 (gg) Sales of component materials used in the
329 construction of a facility, or any addition or improvement

330 thereto, and sales of machinery and equipment not later than three
331 (3) months after the completion of construction of the facility,
332 or any addition or improvement thereto, to be used in the facility
333 or any addition or improvement thereto, to technology intensive
334 enterprises for industrial purposes in Tier Three areas (as such
335 areas are designated in accordance with Section 57-73-21), as
336 certified by the State Tax Commission. For purposes of this
337 paragraph, an enterprise must meet the criteria provided for in
338 Section 27-65-17(1)(f) in order to be considered a technology
339 intensive enterprise.

340 (2) Sales of component materials used in the construction of
341 a building, or any addition or improvement thereon, sales of
342 machinery and equipment to be used therein, and sales of
343 manufacturing or processing machinery and equipment which is
344 permanently attached to the ground or to a permanent foundation
345 and which is not by its nature intended to be housed within a
346 building structure, not later than three (3) months after the
347 initial start-up date, to permanent business enterprises engaging
348 in manufacturing or processing in Tier Two areas and Tier One
349 areas (as such areas are designated in accordance with Section
350 57-73-21), which businesses are certified by the State Tax
351 Commission as being eligible for the exemption granted in this
352 paragraph, shall be exempt from one-half (1/2) of the taxes
353 imposed on such transactions under this chapter.

354 (3) Sales of component materials used in the construction of
355 a facility, or any addition or improvement thereon, and sales or
356 leases of machinery and equipment not later than three (3) months
357 after the completion of construction of the facility, or any
358 addition or improvement thereto, to be used in the building or any
359 addition or improvement thereto, to a permanent business
360 enterprise operating a data/information enterprise in Tier Two
361 areas and Tier One areas (as such areas are designated in
362 accordance with Section 57-73-21), which businesses meet minimum

363 criteria established by the Mississippi Development Authority,
364 shall be exempt from one-half (1/2) of the taxes imposed on such
365 transaction under this chapter.

366 (4) Sales of component materials used in the construction of
367 a facility, or any addition or improvement thereto, and sales of
368 machinery and equipment not later than three (3) months after the
369 completion of construction of the facility, or any addition or
370 improvement thereto, to be used in the building or any addition or
371 improvement thereto, to technology intensive enterprises for
372 industrial purposes in Tier Two areas and Tier One areas (as such
373 areas are designated in accordance with Section 57-73-21), which
374 businesses are certified by the State Tax Commission as being
375 eligible for the exemption granted in this paragraph, shall be
376 exempt from one-half (1/2) of the taxes imposed on such
377 transactions under this chapter. For purposes of this subsection,
378 an enterprise must meet the criteria provided for in Section
379 27-65-17(1)(f) in order to be considered a technology intensive
380 enterprise.

381 (5) (a) For purposes of this subsection:

382 (i) "Telecommunications enterprises" shall have
383 the meaning ascribed to such term in Section 57-73-21;

384 (ii) "Tier One areas" mean counties designated as
385 Tier One areas pursuant to Section 57-73-21;

386 (iii) "Tier Two areas" mean counties designated as
387 Tier Two areas pursuant to Section 57-73-21;

388 (iv) "Tier Three areas" mean counties designated
389 as Tier Three areas pursuant to Section 57-73-21; and

390 (v) "Equipment used in the deployment of broadband
391 technologies" means any equipment capable of being used for or in
392 connection with the transmission of information at a rate, prior
393 to taking into account the effects of any signal degradation, that
394 is not less than three hundred eighty-four (384) kilobits per
395 second in at least one direction, including, but not limited to,

396 asynchronous transfer mode switches, digital subscriber line
397 access multiplexers, routers, servers, multiplexers, fiber optics
398 and related equipment.

399 (b) Sales of equipment to telecommunications
400 enterprises after June 30, 2003, and before July 1, 2013, that is
401 installed in Tier One areas and used in the deployment of
402 broadband technologies shall be exempt from one-half (1/2) of the
403 taxes imposed on such transactions under this chapter.

404 (c) Sales of equipment to telecommunications
405 enterprises after June 30, 2003, and before July 1, 2013, that is
406 installed in Tier Two and Tier Three areas and used in the
407 deployment of broadband technologies shall be exempt from the
408 taxes imposed on such transactions under this chapter.

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