

By: Representative Formby

To: Ways and Means

HOUSE BILL NO. 289

1 AN ACT TO AMEND SECTION 27-65-3, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT FINANCE CHARGES AND CARRYING CHARGES SHALL NOT BE
3 INCLUDED WITHIN THE MEANING OF "GROSS PROCEEDS OF SALES" FOR
4 PURPOSES OF THE STATE SALES TAX LAW; TO AMEND SECTION 27-67-3,
5 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FINANCE CHARGES AND
6 CARRYING CHARGES SHALL NOT BE INCLUDED WITHIN THE MEANING OF
7 "PURCHASE PRICE" OR "SALES PRICE" FOR PURPOSES OF THE STATE USE
8 TAX LAW; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 27-65-3, Mississippi Code of 1972, is
11 amended as follows:

12 27-65-3. The words, terms and phrases, when used in this
13 chapter, shall have the meanings ascribed to them herein.

14 (a) "Tax Commission" means the State Tax Commission of
15 the State of Mississippi.

16 (b) "Commissioner" means the Chairman of the State Tax
17 Commission.

18 (c) "Person" means * * * any individual, firm,
19 copartnership, joint venture, association, corporation, promoter
20 of a temporary event, estate, trust or other group or combination
21 acting as a unit, and includes the plural as well as the singular
22 in number. "Person" shall include husband or wife or both where
23 joint benefits are derived from the operation of a business taxed
24 hereunder. "Person" shall also include any state, county,
25 municipal or other agency or association engaging in a business
26 taxable under this chapter.

27 (d) "Tax year" or "taxable year" means either the
28 calendar year or the taxpayer's fiscal year.

29 (e) "Taxpayer" means any person liable for or having
30 paid any tax to the State of Mississippi under the provisions of
31 this chapter.

32 (f) "Sale" or "sales" includes the barter or exchange
33 of property as well as the sale thereof for money or other
34 consideration, and every closed transaction by which the title to
35 taxable property passes shall constitute a taxable event.

36 "Sale" shall also include the passing of title to property
37 for a consideration of coupons, trading stamps or by any other
38 means when redemption is subsequent to the original sale by which
39 the coupon, stamp or other obligation was created.

40 The situs of a sale for the purpose of distributing taxes to
41 municipalities shall be the same as the location of the business
42 from which the sale is made except that:

43 (i) Retail sales along a route from a vehicle or
44 otherwise by a transient vendor shall take the situs of delivery
45 to the customer.

46 (ii) The situs of wholesale sales of tangible
47 personal property taxed at wholesale rates, the amount of which is
48 allowed as a credit against the sales tax liability of the
49 retailer, shall be the same as the location of the business of the
50 retailer receiving the credit.

51 (iii) The situs of wholesale sales of tangible
52 personal property taxed at wholesale rates, the amount of which is
53 not allowed as a credit against the sales tax liability of the
54 retailer, shall have a rural situs.

55 (iv) Income received from the renting or leasing
56 of property used for transportation purposes between cities or
57 counties shall have a rural situs.

58 (g) "Delivery charges" means any expenses incurred by a
59 seller in acquiring merchandise for sale in the regular course of
60 business commonly known as "freight-in" or "transportation

61 costs-in." "Delivery charges" also include any charges made by
62 the seller for delivery of property sold to the purchaser.

63 (h) "Gross proceeds of sales" means the value
64 proceeding or accruing from the full sale price of tangible
65 personal property, including installation charges, * * * without
66 any deduction for delivery charges, cost of property sold, other
67 expenses or losses, or taxes of any kind except those expressly
68 exempt by this chapter.

69 Where a trade-in is taken as part payment on tangible
70 personal property sold, "gross proceeds of sales" shall include
71 only the difference received between the selling price of the
72 tangible personal property and the amount allowed for a trade-in
73 of property of the same kind. When the trade-in is subsequently
74 sold, the selling price thereof shall be included in "gross
75 proceeds of sales."

76 "Gross proceeds of sales" shall include the value of any
77 goods, wares, merchandise or property purchased at wholesale or
78 manufactured, and any mineral or natural resources produced which
79 are excluded from the tax levied by Section 27-65-15, which are
80 withdrawn or used from an established business or from the stock
81 in trade for consumption or any other use in the business or by
82 the owner. However, "gross proceeds of sales" does not include
83 meals prepared by a restaurant and provided at no charge to
84 employees of the restaurant or donated to a charitable
85 organization that regularly provides food to the needy and the
86 indigent and which has been granted exemption from the federal
87 income tax as an organization described in Section 501(c)(3) of
88 the Internal Revenue Code of 1986.

89 "Gross proceeds of sales" shall not include bad check or
90 draft service charges as provided for in Section 97-19-57.

91 "Gross proceeds of sales" does not include finance charges,
92 carrying charges or any other addition to the selling price as a
93 result of deferred payments by the purchaser.

94 (i) "Gross income" means the total charges for service
95 or the total receipts (actual or accrued) derived from trades,
96 business or commerce by reason of the investment of capital in the
97 business engaged in, including the sale or rental of tangible
98 personal property, compensation for labor and services performed,
99 and including the receipts from the sales of property retained as
100 toll, without any deduction for rebates, cost of property sold,
101 cost of materials used, labor costs, interest paid, losses or any
102 expense whatever.

103 "Gross income" shall also include the cost of property given
104 as compensation when said property is consumed by a person
105 performing a taxable service for the donor.

106 However, "gross income" or "gross proceeds of sales" shall
107 not be construed to include the value of goods returned by
108 customers when the total sale price is refunded either in cash or
109 by credit, or cash discounts allowed and taken on sales. Cash
110 discounts shall not include the value of trading stamps given with
111 a sale of property.

112 (j) "Tangible personal property" means personal
113 property perceptible to the human senses or by chemical analysis
114 as opposed to real property or intangibles and shall include
115 property sold on an installed basis which may become a part of
116 real or personal property.

117 (k) "Installation charges" means the charge for the
118 application of tangible personal property to real or personal
119 property without regard to whether or not it becomes a part of the
120 real property or retains its personal property classification. It
121 shall include, but not be limited to, sales in place of roofing,
122 tile, glass, carpets, drapes, fences, awnings, window air
123 conditioning units, gasoline pumps, window guards, floor
124 coverings, carports, store fixtures, aluminum and plastic siding,
125 tombstones and similar personal property.

126 (l) "Newspaper" means a periodical which:

127 (i) Is not published primarily for advertising
128 purposes and has not contained more than seventy-five percent
129 (75%) advertising in more than one-half (1/2) of its issues during
130 any consecutive twelve-month period excluding separate advertising
131 supplements inserted into but separately identifiable from any
132 regular issue or issues;

133 (ii) Has been established and published
134 continuously for at least twelve (12) months;

135 (iii) Is regularly issued at stated intervals no
136 less frequently than once a week, bears a date of issue, and is
137 numbered consecutively; provided, however, that publication on
138 legal holidays of this state or of the United States and on
139 Saturdays and Sundays shall not be required, and failure to
140 publish not more than two (2) regular issues in any calendar year
141 shall not exclude a periodical from this definition;

142 (iv) Is issued from a known office of publication,
143 which shall be the principal public business office of the
144 newspaper and need not be the place at which the periodical is
145 printed and a newspaper shall be deemed to be "published" at the
146 place where its known office of publication is located;

147 (v) Is formed of printed sheets; provided,
148 however, that a periodical that is reproduced by the stencil,
149 mimeograph or hectograph process shall not be considered to be a
150 "newspaper"; and

151 (vi) Is originated and published for the
152 dissemination of current news and intelligence of varied, broad
153 and general public interest, announcements and notices, opinions
154 as editorials on a regular or irregular basis, and advertising and
155 miscellaneous reading matter.

156 The term "newspaper" shall include periodicals which are
157 designed primarily for free circulation or for circulation at
158 nominal rates as well as those which are designed for circulation
159 at more than a nominal rate.

160 The term "newspaper" shall not include a publication or
161 periodical which is published, sponsored by, is directly supported
162 financially by, or is published to further the interests of, or is
163 directed to, or has a circulation restricted in whole or in part
164 to any particular sect, denomination, labor or fraternal
165 organization or other special group or class or citizens.

166 For purposes of this paragraph, a periodical designed
167 primarily for free circulation or circulation at nominal rates
168 shall not be considered to be a newspaper unless such periodical
169 has made an application for such status to the Tax Commission in
170 the manner prescribed by the commission and has provided to the
171 Tax Commission documentation satisfactory to the commission
172 showing that such periodical meets the requirements of the
173 definition of the term "newspaper." However, if such periodical
174 has been determined to be a newspaper under action taken by the
175 State Tax Commission on or before April 11, 1996, such periodical
176 shall be considered to be a newspaper without the necessity of
177 applying for such status. A determination by the State Tax
178 Commission that a publication is a newspaper shall be limited to
179 the application of this chapter and shall not establish that the
180 publication is a newspaper for any other purpose.

181 **SECTION 2.** Section 27-67-3, Mississippi Code of 1972, is
182 amended as follows:

183 27-67-3. Whenever used in this article, the words, phrases
184 and terms shall have the meaning ascribed to them as follows:

185 (a) "Tax Commission" means the State Tax Commission of
186 the State of Mississippi.

187 (b) "Commissioner" means the Chairman of the State Tax
188 Commission.

189 (c) "Person" means any individual, firm, partnership,
190 joint venture, association, corporation, estate, trust, receiver,
191 syndicate or any other group or combination acting as a unit and
192 includes the plural as well as the singular in number. "Person"

193 shall also include husband or wife, or both, where joint benefits
194 are derived from the operation of a business taxed hereunder or
195 where joint benefits are derived from the use of property taxed
196 hereunder.

197 (d) "Taxpayer" means any person liable for the payment
198 of any tax hereunder, or liable for the collection and payment of
199 the tax.

200 (e) "Sale" or "purchase" means the exchange of
201 properties for money or other consideration, and the barter of
202 properties. Every closed transaction by which title to, or
203 possession of, tangible personal property passes shall constitute
204 a taxable event. A transaction whereby the possession of property
205 is transferred but the seller retains title as security for
206 payment of the selling price shall be deemed a sale.

207 (f) "Purchase price" or "sales price" means the total
208 amount for which tangible personal property is purchased or sold,
209 valued in money, including * * * installation and service charges,
210 and freight charges to the point of use within this state, without
211 any deduction for cost of property sold, expenses or losses, or
212 taxes of any kind except those exempt by the sales tax law.

213 "Purchase price" or "sales price" shall not include cash discounts
214 allowed and taken or merchandise returned by customers when the
215 total sales price is refunded either in cash or by credit, and
216 shall not include amounts allowed for a trade-in of similar
217 property. "Purchase price" or "sales price" does not include
218 finance charges, carrying charges or any other addition to the
219 selling price as a result of deferred payments by the purchaser.

220 (g) "Lease" or "rent" means any agreement entered into
221 for a consideration that transfers possession or control of
222 tangible personal property to a person for use within this state.

223 (h) "Value" means the estimated or assessed monetary
224 worth of a thing or property. The value of property transferred
225 into this state for sales promotion or advertising shall be an

226 amount not less than the cost paid by the transferor or donor.
227 The value of property which has been used in another state shall
228 be determined by its cost less straight line depreciation provided
229 that value shall never be less than twenty percent (20%) of the
230 cost or other method acceptable to the commissioner. On property
231 imported by the manufacturer thereof for rental or lease within
232 this state, value shall be the manufactured cost of the property
233 and freight to the place of use in Mississippi.

234 (i) "Tangible personal property" means personal
235 property perceptible to the human senses or by chemical analysis,
236 as opposed to real property or intangibles. "Tangible personal
237 property" shall include printed, mimeographed, multigraphed
238 matter, or material reproduced in any other manner, and books,
239 catalogs, manuals, publications or similar documents covering the
240 services of collecting, compiling or analyzing information of any
241 kind or nature. However, reports representing the work of persons
242 such as lawyers, accountants, engineers and similar professionals
243 shall not be included. "Tangible personal property" shall also
244 include tangible advertising or sales promotion materials such as,
245 but not limited to, displays, brochures, signs, catalogs, price
246 lists, point of sale advertising materials and technical manuals.
247 Tangible personal property shall also include computer software
248 programs.

249 (j) "Person doing business in this state," "person
250 maintaining a place of business within this state," or any similar
251 term means any person having within this state an office, a
252 distribution house, a salesroom or house, a warehouse, or any
253 other place of business, or owning personal property located in
254 this state used by another person, or installing personal property
255 in this state. This definition also includes any person selling
256 or taking orders for any tangible personal property, either
257 personally, by mail or through an employee representative,

258 salesman, commission agent, canvasser, solicitor or independent
259 contractor or by any other means from within the state.

260 Any person doing business under the terms of the article by
261 reason of coming under any one or more of the qualifying
262 provisions listed above shall be considered as doing business on
263 all transactions involving sales to persons within this state.

264 (k) "Use" or "consumption" means the first use or
265 intended use within this state of tangible personal property and
266 shall include rental or loan by owners or use by lessees or other
267 persons receiving benefits from use of the property. "Use" or
268 "consumption" shall include the benefit realized or to be realized
269 by persons importing or causing to be imported into this state
270 tangible advertising or sales promotion materials.

271 (l) "Storage" means keeping tangible personal property
272 in this state for subsequent use or consumption in this state.

273 **SECTION 3.** Nothing in this act shall affect or defeat any
274 claim, assessment, appeal, suit, right or cause of action for
275 taxes due or accrued under the sales tax laws or use tax laws
276 before the date on which this act becomes effective, whether such
277 claims, assessments, appeals, suits or actions have been begun
278 before the date on which this act becomes effective or are begun
279 thereafter; and the provisions of the sales tax laws and use tax
280 laws are expressly continued in full force, effect and operation
281 for the purpose of the assessment, collection and enrollment of
282 liens for any taxes due or accrued and the execution of any
283 warrant under such laws before the date on which this act becomes
284 effective, and for the imposition of any penalties, forfeitures or
285 claims for failure to comply with such laws.

286 **SECTION 4.** This act shall take effect and be in force from
287 and after July 1, 2007.