

By: Representative Watson

To: Ways and Means

HOUSE BILL NO. 963

1 AN ACT TO AMEND SECTION 27-65-35, MISSISSIPPI CODE OF 1972,
2 TO INCREASE THE TIME WITHIN WHICH THE CHAIRMAN OF THE STATE TAX
3 COMMISSION MUST DEMAND PAYMENT OF SALES TAXES AND DAMAGES ASSESSED
4 FOR FAILURE TO FILE A SALES TAX RETURN; TO INCREASE THE TIME
5 WITHIN WHICH THE TAXPAYER MAY PAY THE TAX IN LIEU OF SUCH
6 ASSESSMENT; TO AMEND SECTION 27-65-37, MISSISSIPPI CODE OF 1972,
7 TO INCREASE THE TIME WITHIN WHICH THE CHAIRMAN OF THE STATE TAX
8 COMMISSION MAY DEMAND PAYMENT OF TAXES, DAMAGES AND INTEREST FOR
9 THE FAILURE OF A TAXPAYER TO PAY SALES TAXES; TO AMEND SECTION
10 27-65-9, MISSISSIPPI CODE OF 1972, TO CORRECT AN ERROR; TO AMEND
11 SECTIONS 27-65-7 AND 27-65-17, MISSISSIPPI CODE OF 1972, TO REMOVE
12 A REFERENCE TO A CODE SECTION THAT HAS BEEN REPEALED; AND FOR
13 RELATED PURPOSES.

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

15 **SECTION 1.** Section 27-65-35, Mississippi Code of 1972, is
16 amended as follows:

17 27-65-35. If no return is made on or before the due date by
18 any taxpayer required to make a return, the commissioner, as soon
19 as practicable after the due date, shall make an assessment of
20 taxes and damages from any information available, which shall be
21 prima facie correct. The commissioner shall give written notice
22 to the taxpayer of the tax and damages thus assessed and demand
23 payment within thirty (30) days from the date of the notice. The
24 notice shall be sent by mail to the taxpayer, or delivered by an
25 agent of the commissioner either to the taxpayer or someone of
26 suitable age and discretion at the taxpayer's place of business or
27 residence. * * * However, * * * if the taxpayer shall file a
28 return and pay the tax shown * * * to be due within thirty (30)
29 days from the date of the assessment, the return and payment shall
30 be accepted in lieu of the assessment.

31 **SECTION 2.** Section 27-65-37, Mississippi Code of 1972, is
32 amended as follows:

33 27-65-37. If adequate records of the gross income or gross
34 proceeds of sales are not maintained or invoices preserved as
35 provided herein, or if an audit of the records of a taxpayer, or
36 any return filed by him, or any other information discloses that
37 taxes are due and unpaid, the commissioner shall make assessments
38 of taxes, damages, and interest from any information available,
39 which shall be prima facie correct. The commissioner shall give
40 notice to the taxpayer of such assessments and demand payment of
41 the tax, damages and interest within thirty (30) days from date of
42 delivery of the notice. The notice shall be sent by certified or
43 registered mail or delivered by an agent of the commissioner
44 either to the taxpayer or someone of suitable age and discretion
45 at the taxpayer's residence or place of business.

46 If the taxpayer shall fail or refuse to comply with the
47 notice of assessment or shall fail to petition for a hearing, the
48 commissioner shall proceed as provided in Section 27-65-39.

49 **SECTION 3.** Section 27-65-9, Mississippi Code of 1972, is
50 amended as follows:

51 27-65-9. (1) "Business" shall mean and include all
52 activities or acts engaged in (personal or corporate), for benefit
53 or advantage, either direct or indirect, and not exempting
54 subactivities in connection therewith. Each of such subactivities
55 shall be considered business engaged in, taxable in the class in
56 which it falls.

57 (2) "Business" shall include activities engaged in by exempt
58 organizations or political entities in competition with privately
59 owned business subject to the provisions of this chapter; however,
60 the term "business" shall not include the following activities:

61 (a) Sales of prepaid student meal plans by public or
62 private universities, colleges and community or junior colleges;
63 and

64 (b) Sales of prepared meals by any public or private
65 school to students in Kindergarten through Grade 12.

66 (3) "Business" shall include the activity or activities of a
67 person in this state performing a service under contract or
68 agreement with another person when the service performed is
69 taxable under the provisions of this chapter.

70 (4) "Doing business" shall include any person owning
71 personal property located in this state under lease or rental
72 agreement or any person installing personal property within this
73 state.

74 (5) "Doing business" shall include any person represented in
75 this state by salesmen taking or soliciting orders to be filled
76 from points outside this state for subsequent delivery of the
77 merchandise in equipment owned or leased by the seller to
78 customers located in this state.

79 **SECTION 4.** Section 27-65-7, Mississippi Code of 1972, is
80 amended as follows:

81 27-65-7. "Retailer" shall apply to a person making retail
82 sales through vending machines, by maintaining a store, or
83 operating as a transient vendor, or renting or leasing tangible
84 personal property.

85 "Retail sales" shall mean and include all sales of tangible
86 personal property except those defined herein as wholesale and
87 those made to a wholesaler, jobber, manufacturer or custom
88 processor for resale or for further processing.

89 "Retail sale" shall include the value of any tangible
90 personal property manufactured or purchased at wholesale * * *
91 which is withdrawn from the business or stock in trade and is used
92 or consumed within this state in the business or by the owner or
93 by any other person, whether or not in the regular course of
94 business or trade.

95 "Retail sale" shall also include a sale invoiced to a
96 retailer but delivered to another person who pays for the
97 merchandise upon taking possession.

98 **SECTION 5.** Section 27-65-17, Mississippi Code of 1972, is
99 amended as follows:

100 27-65-17. (1) (a) Except as otherwise provided in this
101 section, upon every person engaging or continuing within this
102 state in the business of selling any tangible personal property
103 whatsoever there is hereby levied, assessed and shall be collected
104 a tax equal to seven percent (7%) of the gross proceeds of the
105 retail sales of the business.

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

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

117 (i) Self-propelled, or

118 (ii) Mounted so that it is permanently attached to
119 other equipment which is self-propelled or permanently attached to
120 other equipment drawn by a vehicle which is self-propelled.

121 (d) Except as otherwise provided in subsection (3) of
122 this section, retail sales of aircraft, automobiles, trucks,
123 truck-tractors, semitrailers and manufactured or mobile homes
124 shall be taxed at the rate of three percent (3%).

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

131 (f) Sales of machinery and machine parts when made to a
132 technology intensive enterprise for plant use only when the
133 machinery and machine parts will be used exclusively and directly
134 within this state for industrial purposes, including, but not
135 limited to, manufacturing or research and development activities,
136 shall be taxed at the rate of one and one-half percent (1-1/2%).
137 In order to be considered a technology intensive enterprise for
138 purposes of this paragraph:

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

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

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

146 (iv) The enterprise shall manufacture plastics,
147 chemicals, automobiles, aircraft, computers or electronics; or
148 shall be a research and development facility, a computer design or
149 related facility, or a software publishing facility or other
150 technology intensive facility or enterprise as determined by the
151 Mississippi Development Authority;

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

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

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

161 (h) Sales of tangible personal property to electric
162 power associations for use in the ordinary and necessary operation

163 of their generating or distribution systems shall be taxed at the
164 rate of one percent (1%).

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

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

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

183 (l) Sales of the factory-built components of modular
184 homes, panelized homes and precut homes, and panel constructed
185 homes consisting of structural insulated panels, shall be taxed at
186 the rate of three percent (3%).

187 (2) From and after January 1, 1995, retail sales of private
188 carriers of passengers and light carriers of property, as defined
189 in Section 27-51-101, shall be taxed an additional two percent
190 (2%).

191 (3) In lieu of the tax levied in subsection (1) of this
192 section, there is levied on retail sales of truck-tractors and
193 semitrailers used in interstate commerce and registered under the
194 International Registration Plan (IRP) or any similar reciprocity
195 agreement or compact relating to the proportional registration of

196 commercial vehicles entered into as provided for in Section
197 27-19-143, a tax at the rate of three percent (3%) of the portion
198 of the sale that is attributable to the usage of such
199 truck-tractor or semitrailer in Mississippi. The portion of the
200 retail sale that is attributable to the usage of such
201 truck-tractor or semitrailer in Mississippi is the retail sales
202 price of the truck-tractor or semitrailer multiplied by the
203 percentage of the total miles traveled by the vehicle that are
204 traveled in Mississippi. The tax levied pursuant to this
205 subsection (3) shall be collected by the State Tax Commission from
206 the purchaser of such truck-tractor or semitrailer at the time of
207 registration of such truck-tractor or semitrailer.

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

211 * * *

212 **SECTION 6.** This act shall take effect and be in force from
213 and after July 1, 2007.