

By: Representatives Davis, Formby, Howell,
Moore

To: Ways and Means

HOUSE BILL NO. 1351

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

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

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

11 27-65-3. The words, terms and phrases, when used in this
12 chapter, shall have the meanings ascribed to them herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

62 (h) "Gross proceeds of sales" means the value
63 proceeding or accruing from the full sale price of tangible
64 personal property, including installation charges, carrying
65 charges, or any other addition to the selling price on account of
66 deferred payments by the purchaser, without any deduction
67 for * * * cost of property sold, other expenses or losses, or
68 taxes of any kind except those expressly 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 delivery charges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

181 27-67-3. Whenever used in this article, the words, phrases
182 and terms shall have the meaning ascribed to them as follows:

183 (a) "Tax Commission" means the State Tax Commission of
184 the State of Mississippi.

185 (b) "Commissioner" means the Chairman of the State Tax
186 Commission.

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

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

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

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

205 (f) "Purchase price" or "sales price" means the total
206 amount for which tangible personal property is purchased or sold,
207 valued in money, including any additional charges for deferred
208 payment, installation and service charges, * * * without any
209 deduction for cost of property sold, expenses or losses, or taxes
210 of any kind except those exempt by the sales tax law. "Purchase
211 price" or "sales price" shall not include cash discounts allowed
212 and taken or merchandise returned by customers when the total
213 sales price is refunded either in cash or by credit, and shall not
214 include amounts allowed for a trade-in of similar property.
215 "Purchase price" or "sales price" does not include freight charges
216 to the point of use within this state.

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

220 (h) "Value" means the estimated or assessed monetary
221 worth of a thing or property. The value of property transferred
222 into this state for sales promotion or advertising shall be an
223 amount not less than the cost paid by the transferor or donor.

224 The value of property which has been used in another state shall
225 be determined by its cost less straight line depreciation provided
226 that value shall never be less than twenty percent (20%) of the
227 cost or other method acceptable to the commissioner. On property
228 imported by the manufacturer thereof for rental or lease within
229 this state, value shall be the manufactured cost of the
230 property * * *.

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

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

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

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

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

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

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