

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.