

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2387

1 AN ACT TO AMEND SECTION 27-65-21, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT PERSONS PERFORMING CONTRACTS FOR THE CONSTRUCTION  
3 OF APARTMENT BUILDINGS AND CONDOMINIUMS SHALL BE SUBJECT TO THE  
4 CONTRACTORS' TAX; AND FOR RELATED PURPOSES.

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

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

8 27-65-21. (1) (a) (i) Upon every person engaging or  
9 continuing in this state in the business of contracting or  
10 performing a contract or engaging in any of the activities, or  
11 similar activities, listed below for a price, commission, fee or  
12 wage, there is hereby levied, assessed and shall be collected a  
13 tax equal to three and one-half percent (3-1/2%) of the total  
14 contract price or compensation received, including all charges  
15 related to the contract such as finance charges and late charges,  
16 from constructing, building, erecting, repairing, grading,  
17 excavating, drilling, exploring, testing or adding to any  
18 building, highway, street, sidewalk, bridge, culvert, sewer,  
19 irrigation or water system, drainage or dredging system, levee or  
20 levee system or any part thereof, railway, reservoir, dam, power  
21 plant, electrical system, air conditioning system, heating system,  
22 transmission line, pipeline, tower, dock, storage tank, wharf,  
23 excavation, grading, water well, any other improvement or  
24 structure or any part thereof when the compensation received  
25 exceeds Ten Thousand Dollars (\$10,000.00). Such activities shall  
26 not include constructing, repairing or adding to property which  
27 retains its identity as personal property. The tax imposed in

28 this section is levied upon the prime contractor and shall be paid  
29 by him.

30 (ii) Amounts included in the contract price or  
31 compensation received representing the sale of manufacturing or  
32 processing machinery for a manufacturer or custom processor shall  
33 be taxed at the rate of one and one-half percent (1-1/2%) in lieu  
34 of the three and one-half percent (3-1/2%).

35 (b) The following shall be excluded from the tax levied  
36 by this section:

37 (i) The contract price or compensation received  
38 for constructing, building, erecting, repairing or adding to any  
39 building, electrical system, air conditioning system, heating  
40 system or any other improvement or structure which is used for or  
41 primarily in connection with a residence or dwelling place for  
42 human beings. Such residences shall include homes, \* \* \* mobile  
43 homes, summer cottages, fishing and hunting camp buildings and  
44 similar buildings, but shall not include apartment buildings,  
45 condominiums, hotels, motels, hospitals, nursing or retirement  
46 homes, tourist cottages or other commercial establishments.

47 (ii) The portion of the total contract price  
48 attributable to design or engineering services if the total  
49 contract price for the project exceeds the sum of One Hundred  
50 Million Dollars (\$100,000,000.00).

51 (iii) The contract price or compensation received  
52 to restore, repair or replace a utility distribution or  
53 transmission system that has been damaged due to ice storm,  
54 hurricane, flood, tornado, wind, earthquake or other natural  
55 disaster if such restoration, repair or replacement is performed  
56 by the entity providing the service at its cost.

57 (c) Sales of materials and services for use in the  
58 activities hereby excluded from taxes imposed by this section,  
59 except services used in activities excluded pursuant to paragraph

60 (b)(iii) of this subsection, shall be subject to taxes imposed by  
61 other sections in this chapter.

62 (2) Upon every person engaging or continuing in this state  
63 in the business of contracting or performing a contract of  
64 redrilling, or working over, or of drilling an oil well or a gas  
65 well, regardless of whether such well is productive or  
66 nonproductive, for any valuable consideration, there is hereby  
67 levied, assessed and shall be collected a tax equal to three and  
68 one-half percent (3-1/2%) of the total contract price or  
69 compensation received when such compensation exceeds Ten Thousand  
70 Dollars (\$10,000.00).

71 The words, terms and phrases as used in this subsection shall  
72 have the meaning ascribed to them as follows:

73 "Operator" -- One who holds all or a fraction of the working  
74 or operating rights in an oil or gas lease, and is obligated for  
75 the costs of production either as a fee owner or under a lease or  
76 any other form of contract creating working or operating rights.

77 "Bottom-hole contribution" -- Money or property given to an  
78 operator for his use in the drilling of a well on property in  
79 which the payor has no interest. The contribution is payable  
80 whether the well is productive or nonproductive.

81 "Dry-hole contribution" -- Money or property given to an  
82 operator for his use in the drilling of a well on property in  
83 which the payor has no interest. Such contribution is payable  
84 only in the event the well is found to be nonproductive.

85 "Turnkey drilling contract" -- A contract for the drilling of  
86 a well which requires the driller to drill a well and, if  
87 commercial production is obtained, to equip the well to such stage  
88 that the lessee or operator may turn a valve and the oil will flow  
89 into a tank.

90 "Total contract price or compensation received" -- As related  
91 to oil and gas well contractors, shall include amounts received as  
92 compensation for all costs of performing a turnkey drilling

93 contract; amounts received or to be received under assignment as  
94 dry-hole money or bottom-hole money; and shall mean and include  
95 anything of value received by the contractor as remuneration for  
96 services taxable hereunder. When the kind and amount of  
97 compensation received by the contractor is contingent upon  
98 production, the taxable amount shall be the total compensation  
99 receivable in the event the well is a dry hole. The taxable  
100 amount in the event of production when the contractor receives a  
101 production interest of an undetermined value in lieu of a fixed  
102 compensation shall be an amount equal to the compensation to the  
103 contractor if the well had been a dry hole.

104 (3) When the work to be performed under any contract is  
105 sublet by the prime contractor to different persons, or in  
106 separate contracts to the same persons, each such subcontractor  
107 performing any part of said work shall be liable for the amount of  
108 the tax which accrues on account of the work performed by such  
109 person when the tax heretofore imposed has not been paid upon the  
110 whole contract by the prime contractor.

111 When a person engaged in any business on which a tax is  
112 levied in Section 27-65-23, also qualifies as a contractor, and  
113 contracts with the owner of any project to perform any services in  
114 excess of Ten Thousand Dollars (\$10,000.00) herein taxed, such  
115 person shall pay the tax imposed by this section in lieu of the  
116 tax imposed by Section 27-65-23.

117 Any person entering into any contract over Seventy-five  
118 Thousand Dollars (\$75,000.00) as defined in this section shall,  
119 before beginning the performance of such contract or contracts,  
120 either pay the contractors' tax in advance, together with any use  
121 taxes due under Section 27-67-5, or execute and file with the  
122 Chairman of the State Tax Commission a good and valid bond in a  
123 surety company authorized to do business in this state, or with  
124 sufficient sureties to be approved by the commissioner conditioned  
125 that all taxes which may accrue to the State of Mississippi under

126 this chapter, or under Section 27-67-5 and Section 27-7-5, will be  
127 paid when due. Such bonds shall be either (a) "job bonds" which  
128 guarantee payment when due of the aforesaid taxes resulting from  
129 performance of a specified job or activity regardless of date of  
130 completion; or (b) "blanket bonds" which guarantee payment when  
131 due of the aforesaid taxes resulting from performance of all jobs  
132 or activities taxable under this section begun during the period  
133 specified therein, regardless of date of completion. The payments  
134 of the taxes due or the execution and filing of a surety bond  
135 shall be a condition precedent to the commencing work on any  
136 contract taxed hereunder. Provided, that when any bond is filed  
137 in lieu of the prepayment of the tax under this section, that the  
138 tax shall be payable monthly on the amount received during the  
139 previous month, and any use taxes due shall be payable on or  
140 before the twentieth day of the month following the month in which  
141 the property is brought into Mississippi.

142 Any person failing either to execute any bond herein  
143 provided, or to pay the taxes in advance, before beginning the  
144 performance of any contract shall be denied the right to perform  
145 such contract until he complies with such requirements, and the  
146 commissioner is hereby authorized to proceed either under Section  
147 27-65-59, under Section 27-65-61 or by injunction to prevent any  
148 activity in the performance of such contract until either a  
149 satisfactory bond is executed and filed, or all taxes are paid in  
150 advance, and a temporary injunction enjoining the execution of  
151 such contract shall be granted without notice by any judge or  
152 chancellor now authorized by law to grant injunctions.

153 Any person liable for a tax under this section may apply for  
154 and obtain a material purchase certificate from the commissioner  
155 which may entitle the holder to purchase materials and services  
156 that are to become a component part of the structure to be erected  
157 or repaired with no tax due. Provided, that the contractor  
158 applying for the contractor's material purchase certificate shall

159 furnish the State Tax Commission a list of all work sublet to  
160 others, indicating the amount of work to be performed, and the  
161 names and addresses of each subcontractor.

162         **SECTION 2.** This act shall take effect and be in force from  
163 and after July 1, 2007.