

By: Senator(s) Hewes, Gollott, Robertson,
Moffatt, Cuevas, Dawkins

To: Finance

SENATE BILL NO. 3006

1 AN ACT TO AMEND SECTION 41-49-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF "HOTEL" IN ORDER TO REFLECT CHANGES IN
3 THE HOTEL INDUSTRY WITHIN THE STATE OF MISSISSIPPI, AND TO DEFINE
4 "BONA FIDE WRITTEN LEASE"; TO AMEND SECTION 27-65-23, MISSISSIPPI
5 CODE OF 1972, IN ORDER TO ENSURE THAT ANY "HOTEL" ESTABLISHMENT
6 COMPLIES WITH THE STATE'S SALES TAX REQUIREMENTS; AND FOR RELATED
7 PURPOSES.

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

9 SECTION 1. Section 41-49-3, Mississippi Code of 1972, is
10 amended as follows:

11 41-49-3. (1) The term "hotel" shall mean and include any
12 entity or individual engaged in the business of furnishing or
13 providing one or more rooms intended or designed for dwelling,
14 lodging or sleeping purposes that at any one time will accommodate
15 transient guests on a daily or weekly basis and that are known to
16 the trade as such and includes every building or other structure
17 kept, used, maintained or advertised as, or held out to the public
18 to be, a place where sleeping accommodations are supplied for pay
19 or other consideration to transient or permanent guests or tenants
20 that have not entered into a bona fide written lease for a term of
21 more than ninety (90) consecutive days, whether such establishment
22 be known as a hotel, apartment hotel, condominium, cooperative
23 housing, time-share, bed-and-breakfast, rooming house,
24 recreational vehicle park, cabin, inn, tavern, club, resort,
25 tourist home, tourist court, motel, court, motor court, motor
26 lodge or by any other like term regardless of the number of rooms,
27 lots, units, suites, spaces or cabins available, excluding nursing
28 homes or institutions for the aged or infirm as defined in Section
29 43-11-1, * * * or any facility or unit defined as a "condominium"

30 by Section 89-9-5 which is leased for a period of more than ninety
31 (90) consecutive days as evidenced by a bona fide written lease as
32 defined by subsection (2).

33 (2) As used in this section, "bona fide written lease" means
34 a written document that clearly demonstrates it is intended for
35 the transient guest to have exclusive use of the leased unit in
36 the hotel. Factors to be considered in evaluating the parties'
37 intent include, but are not limited to:

38 (a) The length of the lease, including the beginning
39 and ending date;

40 (b) A statement giving the lessee complete and
41 exclusive use of the property for the entire duration of the
42 lease;

43 (c) Execution in good faith, without deceit or fraud;

44 (d) A sufficient description of the leased property;

45 (e) A statement that the lease contains the complete
46 and sole agreement;

47 (f) A provision that the lessee will pay an agreed
48 amount of rent;

49 (g) A statement containing the due date, frequency and
50 address for payment of the rent;

51 (h) A statement specifying what conditions will result
52 in early termination of the lease, the rights and obligations of
53 the parties at termination and any penalties that will result from
54 early termination; and

55 (i) Signatures of the named parties, lessee and lessor.

56 **SECTION 2.** Section 27-65-23, Mississippi Code of 1972, is
57 amended as follows:

58 27-65-23. Upon every person engaging or continuing in any of
59 the following businesses or activities there is hereby levied,
60 assessed and shall be collected a tax equal to seven percent (7%)
61 of the gross income of the business, except as otherwise provided:

62 Air conditioning installation or repairs;

63 Automobile, motorcycle, boat or any other vehicle
64 repairing or servicing;
65 Billiards, pool or domino parlors;
66 Bowling or tenpin alleys;
67 Burglar and fire alarm systems or services;
68 Car washing--automatic, self-service, or manual;
69 Computer software sales and services;
70 Cotton compresses or cotton warehouses;
71 Custom creosoting or treating, custom planing, custom
72 sawing;
73 Custom meat processing;
74 Electricians, electrical work, wiring, all repairs or
75 installation of electrical equipment;
76 Elevator or escalator installing, repairing or
77 servicing;
78 Film developing or photo finishing;
79 Foundries, machine or general repairing;
80 Furniture repairing or upholstering;
81 Grading, excavating, ditching, dredging or landscaping;
82 Hotels, motels, tourist courts or camps, trailer parks,
83 or any entity or individual engaged in the business of furnishing
84 or providing one or more rooms intended or designed for dwelling,
85 lodging or sleeping purposes as defined in Section 41-49-3;
86 Insulating services or repairs;
87 Jewelry or watch repairing;
88 Laundering, cleaning, pressing or dyeing;
89 Marina services;
90 Mattress renovating;
91 Office and business machine repairing;
92 Parking garages and lots;
93 Plumbing or pipe fitting;
94 Public storage warehouses (There shall be no tax levied
95 on gross income of a public storage warehouse derived from the

96 temporary storage of tangible personal property in this state
97 pending shipping or mailing of the property to another state);
98 Refrigerating equipment repairs;
99 Radio or television installing, repairing, or servicing;
100 Renting or leasing personal property used within this
101 state;
102 Services performed in connection with geophysical
103 surveying, exploring, developing, drilling, producing,
104 distributing, or testing of oil, gas, water and other mineral
105 resources;
106 Shoe repairing;
107 Storage lockers;
108 Telephone answering or paging services;
109 Termite or pest control services;
110 Tin and sheet metal shops;
111 TV cable systems, subscription TV services, and other
112 similar activities;
113 Vulcanizing, repairing or recapping of tires or tubes;
114 Welding; and
115 Woodworking or wood turning shops.

116 Income from services taxed herein performed for electric
117 power associations in the ordinary and necessary operation of
118 their generating or distribution systems shall be taxed at the
119 rate of one percent (1%).

120 Income from services taxed herein performed on materials for
121 use in track or track structures to a railroad whose rates are
122 fixed by the Interstate Commerce Commission or the Mississippi
123 Public Service Commission shall be taxed at the rate of three
124 percent (3%).

125 Income from renting or leasing tangible personal property
126 used within this state shall be taxed at the same rates as sales
127 of the same property.

128 Persons doing business in this state who rent transportation
129 equipment with a situs within or without the state to common,
130 contract or private commercial carriers are taxed on that part of
131 the income derived from use within this state. If specific
132 accounting is impracticable, a formula may be used with approval
133 of the commissioner.

134 A lessor may deduct from the tax computed on the rental
135 income from tangible personal property a credit for sales or use
136 tax paid to this state at the time of purchase of the specific
137 personal property being leased or rented until such credit has
138 been exhausted.

139 Charges for custom processing and repairing services may be
140 excluded from gross taxable income when the property on which the
141 service was performed is delivered to the customer in another
142 state either by common carrier or in the seller's equipment.

143 When a taxpayer performs unitary services covered by this
144 section, which are performed both in intrastate and interstate
145 commerce, the commissioner is hereby invested with authority to
146 formulate in each particular case and to fix for such taxpayer in
147 each instance formulae of apportionment which will apportion to
148 this state, for taxation, that portion of the services which are
149 performed within the State of Mississippi.

150 **SECTION 3.** This act shall take effect and be in force from
151 and after its passage.