

By: Senator(s) Fillingane

To: Finance

SENATE BILL NO. 3082

1 AN ACT TO AMEND SECTION 27-65-21, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT THE CONTRACTOR'S TAX SHALL NOT BE LEVIED ON
3 AMOUNTS CORRECTLY ITEMIZED IN A CONTRACT AS COMPENSATION FOR
4 PAYMENT OF THE 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); however, the tax shall
26 not be levied, assessed and collected on amounts correctly
27 itemized in the contract as compensation for payment of the tax
28 levied in this section. Such activities shall not include

29 constructing, repairing or adding to property which retains its
30 identity as personal property. The tax imposed in this section is
31 levied upon the prime contractor and shall be paid by him.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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