

By: Senator(s) Massey

To: Finance

## SENATE BILL NO. 2944

1 AN ACT TO AMEND SECTION 27-65-3, MISSISSIPPI CODE OF 1972, TO  
2 MAKE IT CLEAR THAT THE TERM "INSTALLATION CHARGES" UNDER THE SALES  
3 TAX LAW DOES NOT INCLUDE CHARGES FOR APPLICATION OF TANGIBLE  
4 PERSONAL PROPERTY DURING CONSTRUCTION WORK OR CARPENTRY WHEN THE  
5 PRINCIPAL ACTIVITY OF SUCH WORK IS THE ERECTION OF OR REPAIRS TO  
6 BUILDINGS; AND FOR RELATED PURPOSES.

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

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

10 27-65-3. The words, terms and phrases, when used in this  
11 chapter, shall have the meanings ascribed to them herein.

12 (a) "Tax Commission" or "department" means the  
13 Department of Revenue of the State of Mississippi.

14 (b) "Commissioner" means the Commissioner of Revenue of  
15 the Department of Revenue.

16 (c) "Person" means and includes any individual, firm,  
17 copartnership, joint venture, association, corporation, promoter  
18 of a temporary event, estate, trust or other group or combination  
19 acting as a unit, and includes the plural as well as the singular  
20 in number. "Person" shall include husband or wife, or both, where



21 joint benefits are derived from the operation of a business taxed  
22 hereunder. "Person" shall also include any state, county,  
23 municipal or other agency or association engaging in a business  
24 taxable under this chapter.

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

27 (e) "Taxpayer" means any person liable for or having  
28 paid any tax to the State of Mississippi under the provisions of  
29 this chapter. A taxpayer is required to obtain a sales tax permit  
30 under Section 27-65-27 before engaging in business in this state.  
31 If a taxpayer fails to obtain a sales tax permit before engaging  
32 in business in this state, the taxpayer shall pay the retail rate  
33 on all purchases of tangible personal property and/or services in  
34 this state, even if purchased for resale. Upon obtaining a sales  
35 tax permit, a previously unregistered taxpayer shall file sales  
36 tax returns for all tax periods during which he engaged in  
37 business in this state without a sales tax permit, and report and  
38 pay the sales tax accruing from his operation during this period  
39 and any applicable penalties and interest. On such return, the  
40 taxpayer may take a credit for any sales taxes paid during the  
41 period he operated without a sales tax permit on a purchase that  
42 would have constituted a wholesale sale if the taxpayer had a  
43 sales tax permit at the time of the purchase and if proper  
44 documentation exists to substantiate a wholesale sale. This  
45 credit may also be allowed in any audit of the taxpayer. Any



penalties and interest owed by the taxpayer on the return or in an audit for a period during which he operated without a sales tax permit may be determined based on the sales tax accruing from the taxpayer's operation for that period after the taking of this credit.

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

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

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

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

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



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

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

(g) "Delivery charges" shall mean and include any expenses incurred by a seller in acquiring merchandise for sale in the regular course of business commonly known as "freight-in" or "transportation costs-in." "Delivery charges" also include any charges made by the seller for delivery of property sold to the purchaser.

(h) "Gross proceeds of sales" means the value proceeding or accruing from the full sale price of tangible personal property, including installation charges, without any deduction for delivery charges, cost of property sold, other expenses or losses, or taxes of any kind except those expressly exempt by this chapter.

"Gross proceeds of sales" includes consideration received by the seller from third parties if:

(i) The seller actually received consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;



(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One (1) of the following criteria is met:

1. The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

2. The purchaser identified himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a "preferred customer" card that is available to any patron does not constitute membership in such a group); or

3. The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

Where a trade-in is taken as part payment on tangible personal property sold, "gross proceeds of sales" shall include only the difference received between the selling price of the



tangible personal property and the amount allowed for a trade-in of property of the same kind. When the trade-in is subsequently sold, the selling price thereof shall be included in "gross proceeds of sales."

"Gross proceeds of sales" shall include the value of any goods, wares, merchandise or property purchased at wholesale or manufactured, and any mineral or natural resources produced, which are withdrawn or used from an established business or from the stock in trade for consumption or any other use in the business or by the owner. However, "gross proceeds of sales" does not include meals prepared by a restaurant and provided at no charge to employees of the restaurant or donated to a charitable organization that regularly provides food to the needy and the indigent and which has been granted exemption from the federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986.

"Gross proceeds of sales" shall not include bad check or draft service charges as provided for in Section 97-19-57.

"Gross proceeds of sales" does not include finance charges, carrying charges or any other addition to the selling price as a result of deferred payments by the purchaser.

(i) "Gross income" means the total charges for service or the total receipts (actual or accrued) derived from trades, business or commerce by reason of the investment of capital in the business engaged in, including the sale or rental of tangible



personal property, compensation for labor and services performed, and including the receipts from the sales of property retained as toll, without any deduction for rebates, cost of property sold, cost of materials used, labor costs, interest paid, losses or any expense whatever.

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

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

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

(k) "Installation charges" shall mean and include the charge for the application of tangible personal property to real or personal property without regard to whether or not it becomes a part of the real property or retains its personal property classification. It shall include, but not be limited to, sales in place of roofing, tile, glass, carpets, drapes, fences, awnings,



169 window air-conditioning units, gasoline pumps, window guards,  
170 floor coverings, carports, store fixtures, aluminum and plastic  
171 siding, tombstones and similar personal property. "Installation  
172 charges" shall not include charges for application of tangible  
173 personal property during construction work or carpentry when the  
174 principal activity of such work is the erection of or repairs to  
175 buildings.

176 (1) "Newspaper" means a periodical which:

177 (i) Is not published primarily for advertising  
178 purposes and has not contained more than seventy-five percent  
179 (75%) advertising in more than one-half (1/2) of its issues during  
180 any consecutive twelve-month period excluding separate advertising  
181 supplements inserted into but separately identifiable from any  
182 regular issue or issues;

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

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

192 (iv) Is issued from a known office of publication,  
193 which shall be the principal public business office of the





newspaper and need not be the place at which the periodical is printed and a newspaper shall be deemed to be "published" at the place where its known office of publication is located;

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

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

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

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

For purposes of this paragraph, a periodical designed primarily for free circulation or circulation at nominal rates shall not be considered to be a newspaper unless such periodical



has made an application for such status to the department in the manner prescribed by the department and has provided to the department documentation satisfactory to the department showing that such periodical meets the requirements of the definition of the term "newspaper." However, if such periodical has been determined to be a newspaper under action taken by the department on or before April 11, 1996, such periodical shall be considered to be a newspaper without the necessity of applying for such status. A determination by the Department of Revenue that a publication is a newspaper shall be limited to the application of this chapter and shall not establish that the publication is a newspaper for any other purpose.

(m) "MPC" or "Material Purchase Certificate" means a certificate for which a person that is liable for the tax levy under Section 27-65-21 can apply and obtain from the commissioner, and when issued, entitles the holder to purchase materials and services that are to become a component part of a structure to be erected or repaired with no tax due. Any person taxable under Section 27-65-21 who obtains an MPC for a project and purchases materials and services in this state that are to become a component part of a structure being erected or repaired in the project and at any time pays sales tax on these purchases may, after obtaining the MPC for the project, take a credit against his sales taxes for the sales tax paid on these purchases if proper documentation exists to substantiate the payment of the sales tax



244 on the purchase of component materials and services. This credit  
245 may also be allowed in any audit of the taxpayer. Any penalties  
246 and interest owed by the taxpayer on the return or in the audit  
247 where this credit is taken may be determined based on the sales  
248 tax due after the taking of this credit.

249       **SECTION 2.** This act shall take effect and be in force from  
250 and after its passage.

