

House Amendments to Senate Bill No. 2944

TO THE SECRETARY OF THE SENATE:

THIS IS TO INFORM YOU THAT THE HOUSE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

100 1. The purchaser presents a coupon,
101 certificate or other documentation to the seller to claim a price
102 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, window air-conditioning units, gasoline pumps, window guards, floor coverings, carports, store fixtures, aluminum and plastic siding, tombstones and similar personal property. "Installation charges" shall not include charges for application of tangible personal property during construction work or carpentry when the principal activity of such work is the erection of or repairs to buildings or other structures. For purposes of this paragraph, "repairs" means the restoration of a building or structure or replacement of a component or portion thereof following an unanticipated or unforeseeable event which caused a degradation in the building's or structure's physical condition, but does not include purely voluntary or elective upgrades to an existing

building or structure when those activities are unrelated to such
an event and are performed due to normal wear and tear.

(1) "Newspaper" means a periodical which:

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

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

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

(iv) Is issued from a known office of publication, 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 on the purchase of component materials and services. This credit may also be allowed in any audit of the taxpayer. Any penalties and interest owed by the taxpayer on the return or in the audit where this credit is taken may be determined based on the sales tax due after the taking of this credit.

256 **SECTION 2.** This act shall take effect and be in force from
257 and after June 30, 2017, and shall be repealed from and after June
258 29, 2017.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 OR OTHER STRUCTURES; AND FOR RELATED PURPOSES.

HR26\SB2944A.J

Andrew Ketchings
Clerk of the House of Representatives