

By: Representative Smith

To: Ways and Means

HOUSE BILL NO. 812

1 AN ACT TO AMEND SECTION 27-65-21, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT ANY CONTRACTOR THAT USES A MATERIAL PURCHASE
3 CERTIFICATE TO PURCHASE MATERIALS OR SERVICES THAT DO NOT BECOME A
4 COMPONENT PART OF A STRUCTURE TO BE ERECTED OR REPAIRED WITH NO
5 SALES TAX DUE SHALL REPORT AND PAY THE TAX DUE ON SUCH PURCHASES;
6 AND FOR RELATED PURPOSES.

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

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

10 27-65-21. (1) (a) (i) Upon every person engaging or
11 continuing in this state in the business of contracting or
12 performing a contract or engaging in any of the activities, or
13 similar activities, listed below for a price, commission, fee or
14 wage, there is hereby levied, assessed and shall be collected a
15 tax equal to three and one-half percent (3-1/2%) of the total
16 contract price or compensation received, including all charges
17 related to the contract such as finance charges and late charges,
18 from constructing, building, erecting, repairing, grading,
19 excavating, drilling, exploring, testing or adding to any
20 building, highway, street, sidewalk, bridge, culvert, sewer,



21 irrigation or water system, drainage or dredging system, levee or
22 levee system or any part thereof, railway, reservoir, dam, power
23 plant, electrical system, air-conditioning system, heating system,
24 transmission line, pipeline, tower, dock, storage tank, wharf,
25 excavation, grading, water well, any other improvement or
26 structure or any part thereof when the compensation received
27 exceeds Ten Thousand Dollars (\$10,000.00). Such activities shall
28 not include constructing, repairing or adding to property which
29 retains its identity as personal property. The tax imposed in
30 this section is levied upon the prime contractor and shall be paid
31 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, mobile homes,
45 summer cottages, fishing and hunting camp buildings and similar



46 buildings, but shall not include apartment buildings,
47 condominiums, hotels, motels, hospitals, nursing or retirement
48 homes, tourist cottages or other commercial establishments.

49 (ii) The portion of the total contract price
50 attributable to design or engineering services if:

51 1. The total contract price for the project
52 exceeds the sum of One Hundred Million Dollars (\$100,000,000.00);
53 or

54 2. The engineering services are performed by
55 a professional engineer as defined in Section 73-13-3, who is the
56 general or prime contractor.

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

63 (iv) The contract price or compensation received
64 for constructing, building, erecting, repairing or adding to any
65 building, facility or structure located at any refinery as defined
66 in Section 27-65-24.

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



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

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

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

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

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

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



95 "Turnkey drilling contract" - A contract for the drilling of
96 a well which requires the driller to drill a well and, if
97 commercial production is obtained, to equip the well to such stage
98 that the lessee or operator may turn a valve and the oil will flow
99 into a tank.

100 "Total contract price or compensation received" - As related
101 to oil and gas well contractors, shall include amounts received as
102 compensation for all costs of performing a turnkey drilling
103 contract; amounts received or to be received under assignment as
104 dry-hole money or bottom-hole money; and shall mean and include
105 anything of value received by the contractor as remuneration for
106 services taxable hereunder. When the kind and amount of
107 compensation received by the contractor is contingent upon
108 production, the taxable amount shall be the total compensation
109 receivable in the event the well is a dry hole. The taxable
110 amount in the event of production when the contractor receives a
111 production interest of an undetermined value in lieu of a fixed
112 compensation shall be an amount equal to the compensation to the
113 contractor if the well had been a dry hole.

114 (3) When the work to be performed under any contract is
115 sublet by the prime contractor to different persons, or in
116 separate contracts to the same persons, each such subcontractor
117 performing any part of said work shall be liable for the amount of
118 the tax which accrues on account of the work performed by such



119 person when the tax heretofore imposed has not been paid upon the
120 whole contract by the prime contractor.

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

127 Any person entering into any contract over Seventy-five
128 Thousand Dollars (\$75,000.00) as defined in this section shall,
129 before beginning the performance of such contract or contracts,
130 either pay the contractors' tax in advance, together with any use
131 taxes due under Section 27-67-5, or execute and file with the
132 commissioner a good and valid bond in a surety company authorized
133 to do business in this state, or with sufficient sureties to be
134 approved by the commissioner conditioned that all taxes which may
135 accrue to the State of Mississippi under this chapter, or under
136 Section 27-67-5 and Section 27-7-5, will be paid when due. Such
137 bonds shall be either (a) "job bonds" which guarantee payment when
138 due of the aforesaid taxes resulting from performance of a
139 specified job or activity regardless of date of completion; or (b)
140 "blanket bonds" which guarantee payment when due of the aforesaid
141 taxes resulting from performance of all jobs or activities taxable
142 under this section begun during the period specified therein,
143 regardless of date of completion. The payments of the taxes due



144 or the execution and filing of a surety bond shall be a condition
145 precedent to the commencing work on any contract taxed hereunder.
146 Provided, that when any bond is filed in lieu of the prepayment of
147 the tax under this section, that the tax shall be payable monthly
148 on the amount received during the previous month, and any use
149 taxes due shall be payable on or before the twentieth day of the
150 month following the month in which the property is brought into
151 Mississippi.

152 Any person failing either to execute any bond herein
153 provided, or to pay the taxes in advance, before beginning the
154 performance of any contract shall be denied the right to perform
155 such contract until he complies with such requirements, and the
156 commissioner is hereby authorized to proceed either under Section
157 27-65-59, under Section 27-65-61 or by injunction to prevent any
158 activity in the performance of such contract until either a
159 satisfactory bond is executed and filed, or all taxes are paid in
160 advance, and a temporary injunction enjoining the execution of
161 such contract shall be granted without notice by any judge or
162 chancellor now authorized by law to grant injunctions.

163 Any person liable for a tax under subsection (1) of this
164 section * * * shall apply for and obtain a material purchase
165 certificate from the commissioner which * * * will entitle the
166 holder to purchase materials and services that are to become a
167 component part of the structure to be erected or repaired with no
168 tax due. Provided, that the contractor applying for the



169 contractor's material purchase certificate shall furnish the
170 Department of Revenue a list of all work sublet to others,
171 indicating the amount of work to be performed, and the names and
172 addresses of each subcontractor. Any contractor that uses a
173 material purchase certificate to purchase materials or services
174 that do not become a component part of the structure to be erected
175 or repaired with no tax due shall report and pay the tax due on
176 such purchases.

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

