

By: Representative Lamar

To: Ways and Means

HOUSE BILL NO. 1669

1 AN ACT TO AMEND SECTION 27-65-3, MISSISSIPPI CODE OF 1972, TO
 2 REVISE THE DEFINITION OF THE TERMS "GROSS PROCEEDS OF SALES" AND
 3 "INSTALLATION CHARGES" UNDER THE STATE SALES TAX LAWS; TO AMEND
 4 SECTION 27-65-23, MISSISSIPPI CODE OF 1972, TO EXEMPT FROM SALES
 5 TAXATION VARIOUS SERVICES WHEN PROVIDED IN CONNECTION WITH A
 6 RESIDENCE OR DWELLING PLACE FOR HUMAN BEINGS; AND FOR RELATED
 7 PURPOSES.

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

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

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

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

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

17 (c) "Person" means and includes any individual, firm,
 18 copartnership, joint venture, association, corporation, promoter
 19 of a temporary event, estate, trust or other group or combination
 20 acting as a unit, and includes the plural as well as the singular



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

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

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



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

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

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

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

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

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



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

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

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

84 (h) "Gross proceeds of sales" means the value
85 proceeding or accruing from the full sale price of tangible
86 personal property, including installation charges, without any
87 deduction for delivery charges, cost of property sold, other
88 expenses or losses, or taxes of any kind except those expressly
89 exempt by this chapter. However, "gross proceeds of sales" shall
90 not include construction, remodeling, renovation or installation
91 charges related to the application of tangible personal property
92 to a residence or dwelling place for human beings. Such
93 residences shall include homes, mobile homes, summer cottages,
94 fishing and hunting camp buildings and similar buildings, but
95 shall not include apartment buildings, condominiums, hotels,



96 motels, hospitals, nursing or retirement homes, tourist cottages
97 or other commercial establishments.

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

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

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

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

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

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

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



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

125 Where a trade-in is taken as part payment on tangible
126 personal property sold, "gross proceeds of sales" shall include
127 only the difference received between the selling price of the
128 tangible personal property and the amount allowed for a trade-in
129 of property of the same kind. When the trade-in is subsequently
130 sold, the selling price thereof shall be included in "gross
131 proceeds of sales."

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

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



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

149 (i) "Gross income" means the total charges for service
150 or the total receipts (actual or accrued) derived from trades,
151 business or commerce by reason of the investment of capital in the
152 business engaged in, including the sale or rental of tangible
153 personal property, compensation for labor and services performed,
154 and including the receipts from the sales of property retained as
155 toll, without any deduction for rebates, cost of property sold,
156 cost of materials used, labor costs, interest paid, losses or any
157 expense whatever.

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

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

167 (j) "Tangible personal property" means personal
168 property perceptible to the human senses or by chemical analysis
169 as opposed to real property or intangibles and shall include



170 property sold on an installed basis which may become a part of
171 real or personal property.

172 (k) "Installation charges" shall mean and include the
173 charge for the application of tangible personal property to real
174 or personal property without regard to whether or not it becomes a
175 part of the real property or retains its personal property
176 classification. However, "installation charges" shall not include
177 the charge for the application of tangible personal property to a
178 residence or dwelling place for human beings. Such residences
179 shall include homes, mobile homes, summer cottages, fishing and
180 hunting camp buildings and similar buildings, but shall not
181 include apartment buildings, condominiums, hotels, motels,
182 hospitals, nursing or retirement homes, tourist cottages or other
183 commercial establishments. * * * Subject to the above,
184 "installation charges" shall include, but not be limited to, sales
185 in place of * * * tile, glass, carpets, drapes, fences, awnings,
186 window air-conditioning units, gasoline pumps, window guards,
187 floor coverings, carports, store fixtures, aluminum and plastic
188 siding, tombstones and similar personal property, as long as such
189 property is not affixed to or incorporated in a residence or
190 dwelling place for human beings.

191 (l) "Newspaper" means a periodical which:

192 (i) Is not published primarily for advertising
193 purposes and has not contained more than seventy-five percent
194 (75%) advertising in more than one-half (1/2) of its issues during



195 any consecutive twelve-month period excluding separate advertising
196 supplements inserted into but separately identifiable from any
197 regular issue or issues;

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

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

207 (iv) Is issued from a known office of publication,
208 which shall be the principal public business office of the
209 newspaper and need not be the place at which the periodical is
210 printed and a newspaper shall be deemed to be "published" at the
211 place where its known office of publication is located;

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

216 (vi) Is originated and published for the
217 dissemination of current news and intelligence of varied, broad
218 and general public interest, announcements and notices, opinions



219 as editorials on a regular or irregular basis, and advertising and
220 miscellaneous reading matter.

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

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

231 For purposes of this paragraph, a periodical designed
232 primarily for free circulation or circulation at nominal rates
233 shall not be considered to be a newspaper unless such periodical
234 has made an application for such status to the department in the
235 manner prescribed by the department and has provided to the
236 department documentation satisfactory to the department showing
237 that such periodical meets the requirements of the definition of
238 the term "newspaper." However, if such periodical has been
239 determined to be a newspaper under action taken by the department
240 on or before April 11, 1996, such periodical shall be considered
241 to be a newspaper without the necessity of applying for such
242 status. A determination by the Department of Revenue that a
243 publication is a newspaper shall be limited to the application of



244 this chapter and shall not establish that the publication is a
245 newspaper for any other purpose.

246 (m) "MPC" or "Material Purchase Certificate" means a
247 certificate for which a person that is liable for the tax levy
248 under Section 27-65-21 can apply and obtain from the commissioner,
249 and when issued, entitles the holder to purchase materials and
250 services that are to become a component part of a structure to be
251 erected or repaired with no tax due. Any person taxable under
252 Section 27-65-21 who obtains an MPC for a project and purchases
253 materials and services in this state that are to become a
254 component part of a structure being erected or repaired in the
255 project and at any time pays sales tax on these purchases may,
256 after obtaining the MPC for the project, take a credit against his
257 sales taxes for the sales tax paid on these purchases if proper
258 documentation exists to substantiate the payment of the sales tax
259 on the purchase of component materials and services. This credit
260 may also be allowed in any audit of the taxpayer. Any penalties
261 and interest owed by the taxpayer on the return or in the audit
262 where this credit is taken may be determined based on the sales
263 tax due after the taking of this credit.

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

266 27-65-23. (1) (a) Upon every person engaging or continuing
267 in any of the following businesses or activities there is hereby
268 levied, assessed and shall be collected a tax equal to seven



269 percent (7%) of the gross income of the business, except as
270 otherwise provided:

- 271 Air-conditioning installation or repairs;
- 272 Automobile, motorcycle, boat or any other vehicle
273 repairing or servicing;
- 274 Billiards, pool or domino parlors;
- 275 Bowling or tenpin alleys;
- 276 Burglar and fire alarm systems or services;
- 277 Car washing – automatic, self-service, or manual;
- 278 Computer software sales and services;
- 279 Cotton compresses or cotton warehouses;
- 280 Custom creosoting or treating, custom planing, custom
281 sawing;
- 282 Custom meat processing;
- 283 Electricians, electrical work, wiring, all repairs or
284 installation of electrical equipment;
- 285 Elevator or escalator installing, repairing or
286 servicing;
- 287 Film developing or photo finishing;
- 288 Foundries, machine or general repairing;
- 289 Furniture repairing or upholstering;
- 290 Grading, excavating, ditching, dredging or landscaping;
- 291 Hotels (as defined in Section 41-49-3), motels, tourist
292 courts or camps, trailer parks;
- 293 Insulating services or repairs;



294 Jewelry or watch repairing;
295 Laundering, cleaning, pressing or dyeing;
296 Marina services;
297 Mattress renovating;
298 Office and business machine repairing;
299 Parking garages and lots;
300 Plumbing or pipe fitting;
301 Public storage warehouses (There shall be no tax levied
302 on gross income of a public storage warehouse derived from the
303 temporary storage of tangible personal property in this state
304 pending shipping or mailing of the property to another state.);
305 Refrigerating equipment repairs;
306 Radio or television installing, repairing, or servicing;
307 Renting or leasing personal property used within this
308 state;
309 Services performed in connection with geophysical
310 surveying, exploring, developing, drilling, producing,
311 distributing, or testing of oil, gas, water and other mineral
312 resources;
313 Shoe repairing;
314 Storage lockers;
315 Telephone answering or paging services;
316 Termite or pest control services;
317 Tin and sheet metal shops;



318 TV cable systems, subscription TV services, and other
319 similar activities;

320 Vulcanizing, repairing or recapping of tires or tubes;
321 Welding; and
322 Woodworking or wood-turning shops.

323 (b) No tax shall be levied, assessed or collected with
324 respect to any businesses or activities identified in paragraph
325 (a) of this subsection when provided in connection with a
326 residence or dwelling place for human beings. Such residences
327 shall include homes, mobile homes, summer cottages, fishing and
328 hunting camp buildings and similar buildings, but shall not
329 include apartment buildings, condominiums, hotels, motels,
330 hospitals, nursing or retirement homes, tourist cottages or other
331 commercial establishments.

332 (2) Income from services taxed herein performed for electric
333 power associations in the ordinary and necessary operation of
334 their generating or distribution systems shall be taxed at the
335 rate of one percent (1%).

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



341 (4) Income from renting or leasing tangible personal
342 property used within this state shall be taxed at the same rates
343 as sales of the same property.

344 (5) Persons doing business in this state who rent
345 transportation equipment with a situs within or without the state
346 to common, contract or private commercial carriers are taxed on
347 that part of the income derived from use within this state. If
348 specific accounting is impracticable, a formula may be used with
349 approval of the commissioner.

350 (6) A lessor may deduct from the tax computed on the rental
351 income from tangible personal property a credit for sales or use
352 tax paid to this state at the time of purchase of the specific
353 personal property being leased or rented until such credit has
354 been exhausted.

355 (7) Charges for custom processing and repairing services may
356 be excluded from gross taxable income when the property on which
357 the service was performed is delivered to the customer in another
358 state either by common carrier or in the seller's equipment.

359 (8) When a taxpayer performs unitary services covered by
360 this section, which are performed both in intrastate and
361 interstate commerce, the commissioner is hereby invested with
362 authority to formulate in each particular case and to fix for such
363 taxpayer in each instance formulae of apportionment which will
364 apportion to this state, for taxation, that portion of the
365 services which are performed within the State of Mississippi.



366 **SECTION 3.** This act shall take effect and be in force from
367 and after July 1, 2023.

