

By: Senator(s) McMahan

To: Finance

SENATE BILL NO. 2699

1 AN ACT TO AMEND SECTION 27-65-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF THE TERM "INSTALLATION CHARGES" UNDER THE
3 STATE SALES TAX LAW TO EXCLUDE CHARGES FOR LABOR SERVICES IN
4 CONNECTION WITH THE APPLICATION OR REPAIR OF RESIDENTIAL ROOFING;
5 AND FOR RELATED PURPOSES.

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

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

9 27-65-3. The words, terms and phrases, when used in this
10 chapter, shall have the meanings ascribed to them herein.

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

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

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



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

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

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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



168 window air-conditioning units, gasoline pumps, window guards,
169 floor coverings, carports, store fixtures, aluminum and plastic
170 siding, tombstones and similar personal property. "Installation
171 charges" shall not include charges for labor services in
172 connection with the application or repair of residential roofing.

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

174 (i) Is not published primarily for advertising
175 purposes and has not contained more than seventy-five percent
176 (75%) advertising in more than one-half (1/2) of its issues during
177 any consecutive twelve-month period excluding separate advertising
178 supplements inserted into but separately identifiable from any
179 regular issue or issues;

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

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

189 (iv) Is issued from a known office of publication,
190 which shall be the principal public business office of the
191 newspaper and need not be the place at which the periodical is



192 printed and a newspaper shall be deemed to be "published" at the
193 place where its known office of publication is located;

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

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

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

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

213 For purposes of this paragraph, a periodical designed
214 primarily for free circulation or circulation at nominal rates
215 shall not be considered to be a newspaper unless such periodical
216 has made an application for such status to the department in the



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

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



242 may also be allowed in any audit of the taxpayer. Any penalties
243 and interest owed by the taxpayer on the return or in the audit
244 where this credit is taken may be determined based on the sales
245 tax due after the taking of this credit.

246 **SECTION 2.** This act shall take effect and be in force from
247 and after July 1, 2023.

