

By: Representative Lamar

To: Ways and Means

HOUSE BILL NO. 1991

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",
3 "GROSS INCOME" AND "INSTALLATION CHARGES" UNDER THE STATE SALES
4 TAX LAWS; TO BRING FORWARD SECTIONS 27-65-21 AND 27-65-23,
5 MISSISSIPPI CODE OF 1972, WHICH ARE SECTIONS OF THE STATE SALES
6 TAX LAW, FOR THE PURPOSES OF POSSIBLE AMENDMENT; 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.



(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.

"Gross proceeds of sales" does not include charges for labor for services performed in connection with construction, repair and/or renovation of a residence or dwelling place for human beings. Such residences or dwelling places shall include homes,



mobile homes, summer cottages, fishing and hunting camp buildings
and similar buildings, but shall not include apartment buildings,
condominiums, hotels, motels, hospitals, nursing or retirement
homes, tourist cottages or other commercial establishments.

(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.

However, "gross income" shall not include charges for labor
for services performed in connection with construction, repair
and/or renovation of a residence or dwelling place for human



170 beings. Such residences or dwelling places shall include homes,
171 mobile homes, summer cottages, fishing and hunting camp buildings
172 and similar buildings, but shall not include apartment buildings,
173 condominiums, hotels, motels, hospitals, nursing or retirement
174 homes, tourist cottages or other commercial establishments.

175 (j) "Tangible personal property" means personal
176 property perceptible to the human senses or by chemical analysis
177 as opposed to real property or intangibles and shall include
178 property sold on an installed basis which may become a part of
179 real or personal property. "Tangible personal property" shall
180 also include computer software but shall not include
181 electronically stored or maintained data.

182 (k) "Installation charges" shall mean and include the
183 charge for the application of tangible personal property to real
184 or personal property without regard to whether or not it becomes a
185 part of the real property or retains its personal property
186 classification. It shall include, but not be limited to, sales in
187 place of roofing, tile, glass, carpets, drapes, fences, awnings,
188 window air-conditioning units, gasoline pumps, window guards,
189 floor coverings, carports, store fixtures, aluminum and plastic
190 siding, tombstones and similar personal property. However,
191 "installation charges" shall not include charges for labor for
192 services performed in connection with construction, repair and/or
193 renovation of a residence or dwelling place for human beings.
194 Such residences or dwelling places shall include homes, mobile



homes, summer cottages, fishing and hunting camp buildings and
similar buildings, but shall not include apartment buildings,
condominiums, hotels, motels, hospitals, nursing or retirement
homes, tourist cottages or other commercial establishments.

(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.

SECTION 2. Section 27-65-21, Mississippi Code of 1972, is brought forward as follows:

27-65-21. (1) (a) (i) Upon every person engaging or continuing in this state in the business of contracting or performing a contract or engaging in any of the activities, or similar activities, listed below for a price, commission, fee or wage, there is hereby levied, assessed and shall be collected a tax equal to three and one-half percent (3-1/2%) of the total contract price or compensation received, including all charges related to the contract such as finance charges and late charges, from constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing or adding to any building, highway, street, sidewalk, bridge, culvert, sewer, irrigation or water system, drainage or dredging system, levee or levee system or any part thereof, railway, reservoir, dam, power plant, electrical system, air-conditioning system, heating system, transmission line, pipeline, tower, dock, storage tank, wharf, excavation, grading, water well, any other improvement or structure or any part thereof when the compensation received exceeds Ten Thousand Dollars (\$10,000.00). Such activities shall not include constructing, repairing or adding to property which retains its identity as personal property. The tax imposed in



this section is levied upon the prime contractor and shall be paid by him.

(ii) Amounts included in the contract price or compensation received representing the sale of manufacturing or processing machinery for a manufacturer or custom processor shall be taxed at the rate of one and one-half percent (1-1/2%) in lieu of the three and one-half percent (3-1/2%).

(b) The following shall be excluded from the tax levied by this section:

(i) The contract price or compensation received for constructing, building, erecting, repairing or adding to any building, electrical system, air-conditioning system, heating system or any other improvement or structure which is used for or primarily in connection with a residence or dwelling place for human beings. Such residences shall include homes, mobile homes, summer cottages, fishing and hunting camp buildings and similar buildings, but shall not include apartment buildings, condominiums, hotels, motels, hospitals, nursing or retirement homes, tourist cottages or other commercial establishments.

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

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



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

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

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

331 (c) Sales of materials and services for use in the
332 activities hereby excluded from taxes imposed by this section,
333 except services used in activities excluded pursuant to paragraph
334 (b)(iii) of this subsection, shall be subject to taxes imposed by
335 other sections in this chapter.

336 (2) Upon every person engaging or continuing in this state
337 in the business of contracting or performing a contract of
338 redrilling, or working over, or of drilling or completing an oil
339 well or a gas well, regardless of whether such well is productive
340 or nonproductive, for any valuable consideration, there is hereby
341 levied, assessed and shall be collected a tax equal to three and
342 one-half percent (3-1/2%) of the total contract price or



343 compensation received when such compensation exceeds Ten Thousand
344 Dollars (\$10,000.00).

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

347 "Operator" – One who holds all or a fraction of the working
348 or operating rights in an oil or gas lease, and is obligated for
349 the costs of production either as a fee owner or under a lease or
350 any other form of contract creating working or operating rights.

351 "Bottom-hole contribution" – Money or property given to an
352 operator for his use in the drilling of a well on property in
353 which the payor has no interest. The contribution is payable
354 whether the well is productive or nonproductive.

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

359 "Turnkey drilling contract" – A contract for the drilling of
360 a well which requires the driller to drill a well and, if
361 commercial production is obtained, to equip the well to such stage
362 that the lessee or operator may turn a valve and the oil will flow
363 into a tank.

364 "Total contract price or compensation received" – As related
365 to oil and gas well contractors, shall include amounts received as
366 compensation for all costs of performing a turnkey drilling
367 contract; amounts received or to be received under assignment as



dry-hole money or bottom-hole money; and shall mean and include anything of value received by the contractor as remuneration for services taxable hereunder. When the kind and amount of compensation received by the contractor is contingent upon production, the taxable amount shall be the total compensation receivable in the event the well is a dry hole. The taxable amount in the event of production when the contractor receives a production interest of an undetermined value in lieu of a fixed compensation shall be an amount equal to the compensation to the contractor if the well had been a dry hole.

(3) When the work to be performed under any contract is sublet by the prime contractor to different persons, or in separate contracts to the same persons, each such subcontractor performing any part of said work shall be liable for the amount of the tax which accrues on account of the work performed by such person when the tax heretofore imposed has not been paid upon the whole contract by the prime contractor.

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

Any person entering into any contract over Seventy-five Thousand Dollars (\$75,000.00) as defined in this section shall,



393 before beginning the performance of such contract or contracts,
394 either pay the contractors' tax in advance, together with any use
395 taxes due under Section 27-67-5, or execute and file with the
396 commissioner a good and valid bond in a surety company authorized
397 to do business in this state, or with sufficient sureties to be
398 approved by the commissioner conditioned that all taxes which may
399 accrue to the State of Mississippi under this chapter, or under
400 Section 27-67-5 and Section 27-7-5, will be paid when due. Such
401 bonds shall be either (a) "job bonds" which guarantee payment when
402 due of the aforesaid taxes resulting from performance of a
403 specified job or activity regardless of date of completion; or (b)
404 "blanket bonds" which guarantee payment when due of the aforesaid
405 taxes resulting from performance of all jobs or activities taxable
406 under this section begun during the period specified therein,
407 regardless of date of completion. The payments of the taxes due
408 or the execution and filing of a surety bond shall be a condition
409 precedent to the commencing work on any contract taxed hereunder.
410 Provided, that when any bond is filed in lieu of the prepayment of
411 the tax under this section, that the tax shall be payable monthly
412 on the amount received during the previous month, and any use
413 taxes due shall be payable on or before the twentieth day of the
414 month following the month in which the property is brought into
415 Mississippi.

416 Any person failing either to execute any bond herein
417 provided, or to pay the taxes in advance, before beginning the



performance of any contract shall be denied the right to perform such contract until he complies with such requirements, and the commissioner is hereby authorized to proceed either under Section 27-65-59, under Section 27-65-61 or by injunction to prevent any activity in the performance of such contract until either a satisfactory bond is executed and filed, or all taxes are paid in advance, and a temporary injunction enjoining the execution of such contract shall be granted without notice by any judge or chancellor now authorized by law to grant injunctions.

Any person liable for a tax under this section may apply for and obtain a material purchase certificate from the commissioner which may entitle the holder to purchase materials and services that are to become a component part of the structure to be erected or repaired with no tax due. Provided, that the contractor applying for the contractor's material purchase certificate shall furnish the Department of Revenue a list of all work sublet to others, indicating the amount of work to be performed, and the names and addresses of each subcontractor.

SECTION 3. Section 27-65-23, Mississippi Code of 1972, is brought forward as follows:

27-65-23. Upon every person engaging or continuing in any of the following businesses or activities there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross income of the business, except as otherwise provided:

Air-conditioning installation or repairs;



443 Automobile, motorcycle, boat or any other vehicle
444 repairing or servicing;
445 Billiards, pool or domino parlors;
446 Bowling or tenpin alleys;
447 Burglar and fire alarm systems or services;
448 Car washing – automatic, self-service, or manual;
449 Computer software services actually performed within
450 this state;
451 Cotton compresses or cotton warehouses;
452 Custom creosoting or treating, custom planing, custom
453 sawing;
454 Custom meat processing;
455 Electricians, electrical work, wiring, all repairs or
456 installation of electrical equipment;
457 Elevator or escalator installing, repairing or
458 servicing;
459 Film developing or photo finishing;
460 Foundries, machine or general repairing;
461 Furniture repairing or upholstering;
462 Grading, excavating, ditching, dredging or landscaping;
463 Hotels (as defined in Section 41-49-3), motels, tourist
464 courts or camps, trailer parks;
465 Insulating services or repairs;
466 Jewelry or watch repairing;
467 Laundering, cleaning, pressing or dyeing;



468 Marina services;
469 Mattress renovating;
470 Office and business machine repairing;
471 Parking garages and lots;
472 Plumbing or pipe fitting;
473 Public storage warehouses (There shall be no tax levied
474 on gross income of a public storage warehouse derived from the
475 temporary storage of tangible personal property in this state
476 pending shipping or mailing of the property to another state.);
477 Refrigerating equipment repairs;
478 Radio or television installing, repairing, or servicing;
479 Renting or leasing personal property used within this
480 state;
481 Services performed in connection with geophysical
482 surveying, exploring, developing, drilling, producing,
483 distributing, or testing of oil, gas, water and other mineral
484 resources;
485 Shoe repairing;
486 Storage lockers;
487 Telephone answering or paging services;
488 Termite or pest control services;
489 Tin and sheet metal shops;
490 TV cable systems, subscription TV services, and other
491 similar activities;
492 Vulcanizing, repairing or recapping of tires or tubes;



493 Welding; and

494 Woodworking or wood-turning shops.

495 Income from services taxed herein performed for electric
496 power associations in the ordinary and necessary operation of
497 their generating or distribution systems shall be taxed at the
498 rate of one percent (1%).

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

504 Income from renting or leasing tangible personal property
505 used within this state shall be taxed at the same rates as sales
506 of the same property.

507 Persons doing business in this state who rent transportation
508 equipment with a situs within or without the state to common,
509 contract or private commercial carriers are taxed on that part of
510 the income derived from use within this state. If specific
511 accounting is impracticable, a formula may be used with approval
512 of the commissioner.

513 A lessor may deduct from the tax computed on the rental
514 income from tangible personal property a credit for sales or use
515 tax paid to this state at the time of purchase of the specific
516 personal property being leased or rented until such credit has
517 been exhausted.



518 Charges for custom processing and repairing services may be
519 excluded from gross taxable income when the property on which the
520 service was performed is delivered to the customer in another
521 state either by common carrier or in the seller's equipment.

522 When a taxpayer performs services covered by this section,
523 which are performed both in intrastate and interstate commerce,
524 the taxpayer may utilize any reasonable formulae of apportionment
525 which will apportion to this state, for taxation, that portion of
526 the services which are performed within the State of Mississippi.

527 **SECTION 4.** This act shall take effect and be in force from
528 and after July 1, 2024.

