

By: Representative Davis

To: Ways and Means

## HOUSE BILL NO. 295

1 AN ACT TO AMEND SECTION 27-65-3, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT DELIVERY CHARGES SHALL NOT BE INCLUDED WITHIN THE  
3 MEANING OF GROSS PROCEEDS OF SALES FOR PURPOSES OF THE STATE SALES  
4 TAX LAW; TO AMEND SECTION 27-67-3, MISSISSIPPI CODE OF 1972, TO  
5 PROVIDE THAT FREIGHT CHARGES SHALL NOT BE INCLUDED WITHIN THE  
6 MEANING OF PURCHASE PRICE, SALES PRICE OR VALUE FOR PURPOSES OF  
7 THE STATE USE TAX LAW; AND FOR RELATED 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" means the State Tax Commission of  
14 the State of Mississippi.

15 (b) "Commissioner" means the Chairman of the State Tax  
16 Commission.

17 (c) "Person" means \* \* \* any individual, firm,  
18 copartnership, joint venture, association, corporation, estate,  
19 trust or other group or combination acting as a unit, and includes  
20 the plural as well as the singular in number. "Person" shall  
21 include husband or wife or both where joint benefits are derived  
22 from the operation of a business taxed hereunder. "Person" shall  
23 also include any state, county, municipal or other agency or  
24 association engaging in a business 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.

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

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

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

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

44 (ii) The situs of wholesale sales of tangible  
45 personal property taxed at wholesale rates, the amount of which is  
46 allowed as a credit against the sales tax liability of the  
47 retailer, shall be the same as the location of the business of the  
48 retailer receiving the credit.

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

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

56 (g) "Delivery charges" \* \* \* means \* \* \* any expenses  
57 incurred by a seller in acquiring merchandise for sale in the  
58 regular course of business commonly known as "freight-in" or  
59 "transportation costs-in." "Delivery charges" also include any  
60 charges made by the seller for delivery of property sold to the  
61 purchaser.

62           (h) "Gross proceeds of sales" means the value  
63 proceeding or accruing from the full sale price of tangible  
64 personal property, including installation charges, carrying  
65 charges, or any other addition to the selling price on account of  
66 deferred payments by the purchaser, without any deduction  
67 for \* \* \* cost of property sold, other expenses or losses, or  
68 taxes of any kind except those expressly exempt by this chapter.

69           Where a trade-in is taken as part payment on tangible  
70 personal property sold, "gross proceeds of sales" shall include  
71 only the difference received between the selling price of the  
72 tangible personal property and the amount allowed for a trade-in  
73 of property of the same kind. When the trade-in is subsequently  
74 sold, the selling price thereof shall be included in "gross  
75 proceeds of sales."

76           "Gross proceeds of sales" shall include the value of any  
77 goods, wares, merchandise or property purchased at wholesale or  
78 manufactured, and any mineral or natural resources produced which  
79 are excluded from the tax levied by Section 27-65-15, which are  
80 withdrawn or used from an established business or from the stock  
81 in trade for consumption or any other use in the business or by  
82 the owner.

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

85           "Gross proceeds of sales" does not include delivery charges.

86           (i) "Gross income" means the total charges for service  
87 or the total receipts (actual or accrued) derived from trades,  
88 business or commerce by reason of the investment of capital in the  
89 business engaged in, including the sale or rental of tangible  
90 personal property, compensation for labor and services performed,  
91 and including the receipts from the sales of property retained as  
92 toll, without any deduction for rebates, cost of property sold,  
93 cost of materials used, labor costs, interest paid, losses or any  
94 expense whatever.

"Gross income" shall also include the cost of property given as compensation when said 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" \* \* \* means \* \* \* 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.

(l) "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 Tax Commission in the manner prescribed by the commission and has provided to the Tax Commission documentation satisfactory to the commission 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 State Tax Commission 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 State Tax Commission 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.

SECTION 2. Section 27-67-3, Mississippi Code of 1972, is amended as follows:

27-67-3. Whenever used in this article, the words, phrases and terms shall have the meaning ascribed to them as follows:

(a) "Tax Commission" means the State Tax Commission of the State of Mississippi.

(b) "Commissioner" means the Chairman of the State Tax Commission.

(c) "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate or any other group or combination acting as a unit and includes the plural as well as the singular in number. "Person" shall also include husband or wife, or both, where joint benefits are derived from the operation of a business taxed hereunder or where joint benefits are derived from the use of property taxed hereunder.

(d) "Taxpayer" means any person liable for the payment of any tax hereunder, or liable for the collection and payment of the tax.

(e) "Sale" or "purchase" means the exchange of properties for money or other consideration, and the barter of

properties. Every closed transaction by which title to, or possession of, tangible personal property passes shall constitute a taxable event. A transaction whereby the possession of property is transferred but the seller retains title as security for payment of the selling price shall be deemed a sale.

(f) "Purchase price" or "sales price" means the total amount for which tangible personal property is purchased or sold, valued in money, including any additional charges for deferred payment, installation and service charges, \* \* \* without any deduction for cost of property sold, expenses or losses, or taxes of any kind except those exempt by the sales tax law. "Purchase price" or "sales price" shall not include cash discounts allowed and taken or merchandise returned by customers when the total sales price is refunded either in cash or by credit, and shall not include amounts allowed for a trade-in of similar property.  
"Purchase price" or "sales price" does not include freight charges to the point of use within this state.

(g) "Lease" or "rent" means any agreement entered into for a consideration that transfers possession or control of tangible personal property to a person for use within this state.

(h) "Value" means the estimated or assessed monetary worth of a thing or property. The value of property transferred into this state for sales promotion or advertising shall be an amount not less than the cost paid by the transferor or donor. The value of property which has been used in another state shall be determined by its cost less straight line depreciation provided that value shall never be less than twenty percent (20%) of the cost or other method acceptable to the commissioner. On property imported by the manufacturer thereof for rental or lease within this state, value shall be the manufactured cost of the property \* \* \*.

(i) "Tangible personal property" means personal property perceptible to the human senses or by chemical analysis,

as opposed to real property or intangibles. "Tangible personal property" shall include printed, mimeographed, multigraphed matter, or material reproduced in any other manner, and books, catalogs, manuals, publications or similar documents covering the services of collecting, compiling or analyzing information of any kind or nature. However, reports representing the work of persons such as lawyers, accountants, engineers and similar professionals shall not be included. "Tangible personal property" shall also include tangible advertising or sales promotion materials such as, but not limited to, displays, brochures, signs, catalogs, price lists, point of sale advertising materials and technical manuals. Tangible personal property shall also include computer software programs.

(j) "Person doing business in this state," "person maintaining a place of business within this state," or any similar term means any person having within this state an office, a distribution house, a salesroom or house, a warehouse, or any other place of business, or owning personal property located in this state used by another person, or installing personal property in this state. This definition also includes any person selling or taking orders for any tangible personal property, either personally, by mail or through an employee representative, salesman, commission agent, canvasser, solicitor or independent contractor or by any other means from within the state.

Any person doing business under the terms of the article by reason of coming under any one or more of the qualifying provisions listed above shall be considered as doing business on all transactions involving sales to persons within this state.

(k) "Use" or "consumption" means the first use or intended use within this state of tangible personal property and shall include rental or loan by owners or use by lessees or other persons receiving benefits from use of the property. "Use" or "consumption" shall include the benefit realized or to be realized

260 by persons importing or causing to be imported into this state  
261 tangible advertising or sales promotion materials.

262 (1) "Storage" means keeping tangible personal property  
263 in this state for subsequent use or consumption in this state.

264 SECTION 3. Nothing in this act shall affect or defeat any  
265 claim, assessment, appeal, suit, right or cause of action for  
266 taxes due or accrued under the sales tax laws or use tax laws  
267 before the date on which this act becomes effective, whether such  
268 claims, assessments, appeals, suits or actions have been begun  
269 before the date on which this act becomes effective or are begun  
270 thereafter; and the provisions of the sales tax laws and use tax  
271 laws are expressly continued in full force, effect and operation  
272 for the purpose of the assessment, collection and enrollment of  
273 liens for any taxes due or accrued and the execution of any  
274 warrant under such laws before the date on which this act becomes  
275 effective, and for the imposition of any penalties, forfeitures or  
276 claims for failure to comply with such laws.

277 SECTION 4. This act shall take effect and be in force from  
278 and after July 1, 1999.