

By: Representative Fleming

To: Ways and Means

HOUSE BILL NO. 286

1 AN ACT TO AMEND SECTION 27-65-17, MISSISSIPPI CODE OF 1972,
2 TO IMPOSE AN ADDITIONAL TAX OF ONE-HALF OF ONE PERCENT ON RETAIL
3 SALES OF FOOD BY RESTAURANTS FOR CONSUMPTION OFF RESTAURANT
4 PREMISES; TO AMEND SECTION 27-65-75, MISSISSIPPI CODE OF 1972, TO
5 PROVIDE THAT THE REVENUE COLLECTED FROM SUCH TAX SHALL BE
6 DEPOSITED INTO THE STATEWIDE LITTER PREVENTION FUND; AND FOR
7 RELATED PURPOSES.

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

9 SECTION 1. Section 27-65-17, Mississippi Code of 1972, is
10 amended as follows:

11 27-65-17. (1) Upon every person engaging or continuing
12 within this state in the business of selling any tangible personal
13 property whatsoever there is hereby levied, assessed and shall be
14 collected a tax equal to seven percent (7%) of the gross proceeds
15 of the retail sales of the business, except as otherwise provided
16 herein.

17 Retail sales of farm tractors shall be taxed at the rate of
18 one percent (1%) when made to farmers for agricultural purposes.

19 Retail sales of farm implements sold to farmers and used
20 directly in the production of poultry, ratite, domesticated fish
21 as defined in Section 69-7-501, livestock, livestock products,
22 agricultural crops or ornamental plant crops or used for other
23 agricultural purposes shall be taxed at the rate of three percent
24 (3%) when used on the farm. The three percent (3%) rate shall
25 also apply to all equipment used in logging, pulpwood operations
26 or tree farming which is either (a) self-propelled or which is (b)
27 mounted so that it is (i) permanently attached to other equipment
28 which is self-propelled or (ii) permanently attached to other
29 equipment drawn by a vehicle which is self-propelled.



30 Except as otherwise provided in subsection (3) of this
31 section, retail sales of aircraft, automobiles, trucks,
32 truck-tractors, semitrailers and mobile homes shall be taxed at
33 the rate of three percent (3%).

34 Sales of manufacturing machinery or manufacturing machine
35 parts when made to a manufacturer or custom processor for plant
36 use only when said machinery and machine parts will be used
37 exclusively and directly within this state in manufacturing a
38 commodity for sale, rental or in processing for a fee shall be
39 taxed at the rate of one and one-half percent (1-1/2%).

40 Sales of materials for use in track and track structures to a
41 railroad whose rates are fixed by the Interstate Commerce
42 Commission or the Mississippi Public Service Commission shall be
43 taxed at the rate of three percent (3%).

44 Sales of tangible personal property to electric power
45 associations for use in the ordinary and necessary operation of
46 their generating or distribution systems shall be taxed at the
47 rate of one percent (1%).

48 Wholesale sales of beer shall be taxed at the rate of seven
49 percent (7%), and the retailer shall file a return and compute the
50 retail tax on retail sales but may take credit for the amount of
51 the tax paid to the wholesaler on said return covering the
52 subsequent sales of same property, provided adequate invoices and
53 records are maintained to substantiate the credit.

54 Wholesale sales of food and drink for human consumption to
55 full service vending machine operators to be sold through vending
56 machines located apart from and not connected with other taxable
57 businesses shall be taxed at the rate of eight percent (8%).

58 A manufacturer selling at retail in this state shall be
59 required to make returns of the gross proceeds of such sales and
60 pay the tax imposed in this section.

61 Any person exercising any privilege taxable under Section
62 27-65-15 and selling his natural resource products at wholesale or



63 to exempt persons shall pay the tax levied by said section in lieu
64 of the tax levied by this section.

65 (2) From and after January 1, 1995, retail sales of private
66 carriers of passengers and light carriers of property, as defined
67 in Section 27-51-101, shall be taxed an additional two percent
68 (2%).

69 (3) In lieu of the tax levied in subsection (1) of this
70 section, there is levied on retail sales of truck-tractors and
71 semitrailers used in interstate commerce and registered under the
72 International Registration Plan (IRP) or any similar reciprocity
73 agreement or compact relating to the proportional registration of
74 commercial vehicles entered into as provided for in Section
75 27-19-143, a tax at the rate of three percent (3%) of the portion
76 of the sale that is attributable to the usage of such
77 truck-tractor or semitrailer in Mississippi. The portion of the
78 retail sale that is attributable to the usage of such
79 truck-tractor or semitrailer in Mississippi is the retail sales
80 price of the truck-tractor or semitrailer multiplied by the
81 percentage of the total miles traveled by the vehicle that are
82 traveled in Mississippi. The tax levied pursuant to this
83 subsection (3) shall be collected by the State Tax Commission from
84 the purchaser of such truck-tractor or semitrailer at the time of
85 registration of such truck-tractor or semitrailer.

86 (4) From and after July 1, 2001, there is levied an
87 additional tax at the rate of one-half of one percent (0.5%) of
88 the gross proceeds of retail sales of food by a restaurant for
89 consumption off such restaurant premises. For the purposes of
90 this subsection (4), the term "restaurant" means a place that is
91 regularly and in a bona fide manner used and kept open for the
92 servicing of meals to guests for compensation, regardless of whether
93 for consumption on or off the premises, and which has suitable
94 kitchen facilities connected therewith for cooking an assortment
95 of foods and meals commonly ordered at various hours of the day.



96 SECTION 2. Section 27-65-75, Mississippi Code of 1972, is
97 amended as follows:

98 27-65-75. On or before the fifteenth day of each month, the
99 revenue collected under the provisions of this chapter during the
100 preceding month shall be paid and distributed as follows:

101 (1) On or before August 15, 1992, and each succeeding month
102 thereafter through July 15, 1993, eighteen percent (18%) of the
103 total sales tax revenue collected during the preceding month under
104 the provisions of this chapter, except that collected under the
105 provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on
106 business activities within a municipal corporation shall be
107 allocated for distribution to such municipality and paid to such
108 municipal corporation. On or before August 15, 1993, and each
109 succeeding month thereafter, eighteen and one-half percent
110 (18-1/2%) of the total sales tax revenue collected during the
111 preceding month under the provisions of this chapter, except that
112 collected under the provisions of Sections 27-65-15, 27-65-19(3)
113 and 27-65-21, on business activities within a municipal
114 corporation shall be allocated for distribution to such
115 municipality and paid to such municipal corporation.

116 A municipal corporation, for the purpose of distributing the
117 tax under this subsection, shall mean and include all incorporated
118 cities, towns and villages.

119 Monies allocated for distribution and credited to a municipal
120 corporation under this subsection may be pledged as security for
121 any loan received by the municipal corporation for the purpose of
122 capital improvements as authorized under Section 57-1-303, or
123 loans as authorized under Section 57-44-7, or water systems
124 improvements as authorized under Section 41-3-16.

125 In any county having a county seat which is not an
126 incorporated municipality, the distribution provided hereunder
127 shall be made as though the county seat was an incorporated
128 municipality; however, the distribution to such municipality shall



129 be paid to the county treasury wherein the municipality is located
130 and such funds shall be used for road, bridge and street
131 construction or maintenance therein.

132 (2) On or before September 15, 1987, and each succeeding
133 month thereafter, from the revenue collected under this chapter
134 during the preceding month One Million One Hundred Twenty-five
135 Thousand Dollars (\$1,125,000.00) shall be allocated for
136 distribution to municipal corporations as defined under subsection
137 (1) of this section in the proportion that the number of gallons
138 of gasoline and diesel fuel sold by distributors to consumers and
139 retailers in each such municipality during the preceding fiscal
140 year bears to the total gallons of gasoline and diesel fuel sold
141 by distributors to consumers and retailers in municipalities
142 statewide during the preceding fiscal year. The State Tax
143 Commission shall require all distributors of gasoline and diesel
144 fuel to report to the commission monthly the total number of
145 gallons of gasoline and diesel fuel sold by them to consumers and
146 retailers in each municipality during the preceding month. The
147 State Tax Commission shall have the authority to promulgate such
148 rules and regulations as is necessary to determine the number of
149 gallons of gasoline and diesel fuel sold by distributors to
150 consumers and retailers in each municipality. In determining the
151 percentage allocation of funds under this subsection for the
152 fiscal year beginning July 1, 1987, and ending June 30, 1988, the
153 State Tax Commission may consider gallons of gasoline and diesel
154 fuel sold for a period of less than one (1) fiscal year. For the
155 purposes of this subsection, the term "fiscal year" means the
156 fiscal year beginning July 1 of a year.

157 (3) On or before September 15, 1987, and on or before the
158 fifteenth day of each succeeding month, until the date specified
159 in Section 65-39-35, the proceeds derived from contractors' taxes
160 levied under Section 27-65-21 on contracts for the construction or
161 reconstruction of highways designated under the Four-Lane Highway



162 Program created under Section 65-3-97 shall, except as otherwise
163 provided in Section 31-17-127, be deposited into the State
164 Treasury to the credit of the State Highway Fund to be used to
165 fund such Four-Lane Highway Program. The Mississippi Department
166 of Transportation shall provide to the State Tax Commission such
167 information as is necessary to determine the amount of proceeds to
168 be distributed under this subsection.

169 (4) On or before August 15, 1994, and on or before the
170 fifteenth day of each succeeding month through July 15, 1999, from
171 the proceeds of gasoline, diesel fuel or kerosene taxes as
172 provided in Section 27-5-101(a) (ii)1, Four Million Dollars
173 (\$4,000,000.00) shall be deposited in the State Treasury to the
174 credit of a special fund designated as the "State Aid Road Fund,"
175 created by Section 65-9-17. On or before August 15, 1999, and on
176 or before the fifteenth day of each succeeding month, from the
177 total amount of the proceeds of gasoline, diesel fuel or kerosene
178 taxes apportioned by Section 27-5-101(a) (ii), Four Million
179 Dollars (\$4,000,000.00) or an amount equal to twenty-three and
180 one-fourth percent (23.25%) of such funds, whichever is the
181 greater amount, shall be deposited in the State Treasury to the
182 credit of the "State Aid Road Fund," created by Section 65-9-17.
183 Such funds shall be pledged to pay the principal of and interest
184 on state aid road bonds heretofore issued under Sections 19-9-51
185 through 19-9-77, in lieu of and in substitution for the funds
186 heretofore allocated to counties under this section. Such funds
187 may not be pledged for the payment of any state aid road bonds
188 issued after April 1, 1981; however, this prohibition against the
189 pledging of any such funds for the payment of bonds shall not
190 apply to any bonds for which intent to issue such bonds has been
191 published, for the first time, as provided by law prior to March
192 29, 1981. From the amount of taxes paid into the special fund
193 pursuant to this subsection and subsection (9) of this section,
194 there shall be first deducted and paid the amount necessary to pay



195 the expenses of the Office of State Aid Road Construction, as
196 authorized by the Legislature for all other general and special
197 fund agencies. The remainder of the fund shall be allocated
198 monthly to the several counties in accordance with the following
199 formula:

200 (a) One-third (1/3) shall be allocated to all counties
201 in equal shares;

202 (b) One-third (1/3) shall be allocated to counties
203 based on the proportion that the total number of rural road miles
204 in a county bears to the total number of rural road miles in all
205 counties of the state; and

206 (c) One-third (1/3) shall be allocated to counties
207 based on the proportion that the rural population of the county
208 bears to the total rural population in all counties of the state,
209 according to the latest federal decennial census.

210 For the purposes of this subsection, the term "gasoline,
211 diesel fuel or kerosene taxes" means such taxes as defined in
212 paragraph (f) of Section 27-5-101.

213 The amount of funds allocated to any county under this
214 subsection for any fiscal year after fiscal year 1994 shall not be
215 less than the amount allocated to such county for fiscal year
216 1994. Monies allocated to a county from the State Aid Road Fund
217 for fiscal year 1995 or any fiscal year thereafter that exceed the
218 amount of funds allocated to that county from the State Aid Road
219 Fund for fiscal year 1994, first must be expended by the county
220 for replacement or rehabilitation of bridges on the state aid road
221 system that have a sufficiency rating of less than twenty-five
222 (25), according to National Bridge Inspection standards before
223 such monies may be approved for expenditure by the State Aid Road
224 Engineer on other projects that qualify for the use of state aid
225 road funds.

226 Any reference in the general laws of this state or the
227 Mississippi Code of 1972 to Section 27-5-105 shall mean and be



228 construed to refer and apply to subsection (4) of Section
229 27-65-75.

230 (5) One Million Six Hundred Sixty-six Thousand Six Hundred
231 Sixty-six Dollars (\$1,666,666.00) each month shall be paid into
232 the special fund known as the "State Public School Building Fund"
233 created and existing under the provisions of Sections 37-47-1
234 through 37-47-67. Such payments into said fund are to be made on
235 the last day of each succeeding month hereafter.

236 (6) An amount each month beginning August 15, 1983, through
237 November 15, 1986, as specified in Section 6 of Chapter 542, Laws
238 of 1983, shall be paid into the special fund known as the
239 Correctional Facilities Construction Fund created in Section 6 of
240 Chapter 542, Laws of 1983.

241 (7) On or before August 15, 1992, and each succeeding month
242 thereafter through July 15, 2000, two and two hundred sixty-six
243 one-thousandths percent (2.266%) of the total sales tax revenue
244 collected during the preceding month under the provisions of this
245 chapter, except that collected under the provisions of Section
246 27-65-17(2) shall be deposited by the commission into the School
247 Ad Valorem Tax Reduction Fund created pursuant to Section
248 37-61-35. On or before August 15, 2000, and each succeeding month
249 thereafter, two and two hundred sixty-six one-thousandths percent
250 (2.266%) of the total sales tax revenue collected during the
251 preceding month under the provisions of this chapter, except that
252 collected under the provisions of Section 27-65-17(2), shall be
253 deposited into the School Ad Valorem Tax Reduction Fund created
254 under Section 37-61-35 until such time that the total amount
255 deposited into the fund during a fiscal year equals Forty-two
256 Million Dollars (\$42,000,000.00). Thereafter, the amounts
257 diverted under this subsection (7) during the fiscal year in
258 excess of Forty-two Million Dollars (\$42,000,000.00) shall be
259 deposited into the Education Enhancement Fund created under
260 Section 37-61-33 for appropriation by the Legislature as other



261 education needs and shall not be subject to the percentage
262 appropriation requirements set forth in Section 37-61-33.

263 (8) On or before August 15, 1992, and each succeeding month
264 thereafter, nine and seventy-three one-thousandths percent
265 (9.073%) of the total sales tax revenue collected during the
266 preceding month under the provisions of this chapter, except that
267 collected under the provisions of Section 27-65-17(2) shall be
268 deposited into the Education Enhancement Fund created pursuant to
269 Section 37-61-33.

270 (9) On or before August 15, 1994, and each succeeding month
271 thereafter, from the revenue collected under this chapter during
272 the preceding month, Two Hundred Fifty Thousand Dollars
273 (\$250,000.00) shall be paid into the State Aid Road Fund.

274 (10) On or before August 15, 1994, and each succeeding month
275 thereafter through August 15, 1995, from the revenue collected
276 under this chapter during the preceding month, Two Million Dollars
277 (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad
278 Valorem Tax Reduction Fund established in Section 27-51-105.

279 (11) Notwithstanding any other provision of this section to
280 the contrary, on or before February 15, 1995, and each succeeding
281 month thereafter, the sales tax revenue collected during the
282 preceding month under the provisions of Section 27-65-17(2) and
283 the corresponding levy in Section 27-65-23 on the rental or lease
284 of private carriers of passengers and light carriers of property
285 as defined in Section 27-51-101 shall be deposited, without
286 diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund
287 established in Section 27-51-105.

288 (12) Notwithstanding any other provision of this section to
289 the contrary, on or before August 15, 1995, and each succeeding
290 month thereafter, the sales tax revenue collected during the
291 preceding month under the provisions of Section 27-65-17(1) on
292 retail sales of private carriers of passengers and light carriers
293 of property, as defined in Section 27-51-101 and the corresponding



294 levy in Section 27-65-23 on the rental or lease of these vehicles,
295 shall be deposited, after diversion, into the Motor Vehicle Ad
296 Valorem Tax Reduction Fund established in Section 27-51-105.

297 (13) On or before July 15, 1994, and on or before the
298 fifteenth day of each succeeding month thereafter, that portion of
299 the avails of the tax imposed in Section 27-65-22, which is
300 derived from activities held on the Mississippi state fairgrounds
301 complex, shall be paid into a special fund hereby created in the
302 State Treasury and shall be expended pursuant to legislative
303 appropriations solely to defray the costs of repairs and
304 renovation at such Trade Mart and Coliseum.

305 (14) On or before August 15, 1998, and each succeeding month
306 thereafter through July 15, 2005, that portion of the avails of
307 the tax imposed in Section 27-65-23 which is derived from sales by
308 cotton compresses or cotton warehouses and which would otherwise
309 be paid into the General Fund, shall be deposited in an amount not
310 to exceed Two Million Dollars (\$2,000,000.00) into the special
311 fund created pursuant to Section 69-37-39.

312 (15) Notwithstanding any other provision of this section to
313 the contrary, on or before September 15, 2000, and each succeeding
314 month thereafter, the sales tax revenue collected during the
315 preceding month under the provisions of Section 27-65-19(f), shall
316 be deposited, without diversion, into the Telecommunications Ad
317 Valorem Tax Reduction Fund established in Section 27-38-7.

318 (16) On or before August 15, 2000, and each succeeding month
319 thereafter, the sales tax revenue collected during the preceding
320 month under the provisions of this chapter on the gross proceeds
321 of sales of a project as defined in Section 57-30-1, shall be
322 deposited, after all diversions except the diversion provided for
323 in subsection (1) of this section, into the Sales Tax Incentive
324 Fund created in Section 57-30-3.

325 (17) On or before August 15, 2001, and each succeeding month
326 thereafter, the sales tax revenue collected during the preceding



327 month under the provisions of Section 27-65-17(4) shall be
328 deposited, without diversion, into the Statewide Litter Prevention
329 Fund created in Section 65-1-167.

330 (18) The remainder of the amounts collected under the
331 provisions of this chapter shall be paid into the State Treasury
332 to the credit of the General Fund.

333 (19) It shall be the duty of the municipal officials of any
334 municipality which expands its limits, or of any community which
335 incorporates as a municipality, to notify the commissioner of such
336 action thirty (30) days before the effective date. Failure to so
337 notify the commissioner shall cause such municipality to forfeit
338 the revenue which it would have been entitled to receive during
339 this period of time when the commissioner had no knowledge of the
340 action. If any funds have been erroneously disbursed to any
341 municipality or any overpayment of tax is recovered by the
342 taxpayer, the commissioner may make correction and adjust the
343 error or overpayment with such municipality by withholding the
344 necessary funds from any subsequent payment to be made to the
345 municipality.

346 SECTION 3. Nothing in this act shall affect or defeat any
347 claim, assessment, appeal, suit, right or cause of action for
348 taxes due or accrued under the sales tax laws before the date on
349 which this act becomes effective, whether such claims,
350 assessments, appeals, suits or actions have been begun before the
351 date on which this act becomes effective or are begun thereafter;
352 and the provisions of the sales tax laws are expressly continued
353 in full force, effect and operation for the purpose of the
354 assessment, collection and enrollment of liens for any taxes due
355 or accrued and the execution of any warrant under such laws before
356 the date on which this act becomes effective, and for the
357 imposition of any penalties, forfeitures or claims for failure to
358 comply with such laws.



359 SECTION 4. This act shall take effect and be in force from
360 and after July 1, 2001.

