

By: Representatives Rotenberry, Eaton, Cameron, Davis, Eads, Eakes, Ellzey, Evans, Fillingane, Formby, Frierson, Holland, Holloway, Moore (100th), Moore (60th), Nettles, Robinson (84th), Rogers, Rushing, Ryals, Shows, Smith (59th), Straughter, Weathersby, Zuber

To: Ways and Means

HOUSE BILL NO. 1373

1 AN ACT TO AMEND SECTIONS 27-65-31 AND 27-67-11, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE THAT IF A SELLER MAKES A RETAIL SALE OF A
3 TRACTOR OR FARM IMPLEMENTS TO A PERSON AND COLLECTS SALES OR USE
4 TAX AT A CERTAIN RATE BASED UPON WRITTEN DOCUMENTATION FROM THE
5 PURCHASER INDICATING THAT THE PURCHASER IS A FARMER AND WILL USE
6 THE ITEMS PURCHASED FOR AGRICULTURAL PURPOSES, THE SELLER WILL NOT
7 BE LIABLE FOR ANY ADDITIONAL TAX DUE IF THE STATE TAX COMMISSION
8 DETERMINES THAT THE SALE WAS NOT MADE TO A FARMER FOR AGRICULTURAL
9 PURPOSES; AND FOR RELATED PURPOSES.

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

11 SECTION 1. Section 27-65-31, Mississippi Code of 1972, is
12 amended as follows:

13 27-65-31. Any person liable for a privilege tax levied and
14 assessed by this chapter except the taxes levied by Sections
15 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of 1972,
16 shall add the amount of such tax due by him to the sales price or
17 gross income and, in addition thereto, shall collect, insofar as
18 practicable, the amount of the tax due by him from the purchaser
19 at the time the sales price or gross income is collected.

20 The commissioner is authorized, in his discretion, to
21 prescribe by rule or regulation, brackets or schedules by which
22 the applicable tax shall be collected from the purchaser.

23 The commissioner shall have the authority to make changes as
24 necessary by rule or regulation to implement an agreement for the
25 collection of sales tax by direct marketers with limited contact
26 in Mississippi if, in his discretion, it is beneficial to the
27 state for him to do so.

28 It shall be unlawful for any person, who is liable for a
29 privilege tax levied by this chapter except the taxes levied by

30 Sections 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of
31 1972, to fail or refuse to add to the sales price and collect,
32 insofar as practicable, the amount of tax due by him on each sale,
33 except where the tax was included in the cost of furnishing
34 service when said cost was a factor in the fixing of rates and
35 charges.

36 The tax due under the provisions of this chapter shall be
37 computed and paid on gross income or gross proceeds of sales of
38 the business, regardless of the fact that small unit sales may be
39 within the bracket of one (1) of the schedules which does not
40 provide for the collection of the tax from the customer.

41 Nothing in this section with reference to the collection of
42 the tax from the customer shall be construed to impair, abridge,
43 alter or affect the obligation of any contract in existence at the
44 time it becomes effective.

45 When the tax collected for any filing period is in excess of
46 the amount due, the total tax collected, including that in excess
47 of the computed liability, shall be paid to the commissioner.
48 This provision shall be construed with other provisions of the law
49 and given effect so as to result in the payment to the
50 commissioner of the total tax collected if in excess of the amount
51 due when computed at the applicable rates.

52 The funds collected by the taxpayer (seller) from the
53 purchaser pursuant to the provisions of this chapter shall be
54 considered "trust fund monies" and the taxpayer shall hold these
55 funds in trust for the State of Mississippi; said funds to be
56 separately accounted for as provided by regulation of the
57 commissioner. If the taxpayer fails to remit these trust fund
58 monies as required by law, then the taxpayer may be assessed with
59 a penalty in three (3) times the amount of taxes due. This
60 penalty is to be assessed and collected in the same manner as
61 taxes imposed by this chapter and shall be in addition to all
62 other penalties and/or interest otherwise imposed. For purposes

63 of this section there shall be a presumption that the taxpayer
64 collected the tax from the customer or purchaser.

65 If a taxpayer (seller) makes a retail sale of a farm tractor
66 or farm implements to a person and collects the tax at the rate
67 provided in Section 27-65-17 based upon written documentation from
68 the purchaser indicating that the purchaser is a farmer and will
69 use the items purchased for agricultural purposes, the taxpayer
70 (seller) shall not be liable for any additional tax due if the
71 commission determines that the sale was not made to a farmer for
72 agricultural purposes.

73 Any person violating the provisions of this section shall be
74 guilty of a misdemeanor and, upon conviction, shall be fined in a
75 sum not less than Fifty Dollars (\$50.00) nor more than One Hundred
76 Dollars (\$100.00).

77 SECTION 2. Section 27-67-11, Mississippi Code of 1972, is
78 amended as follows:

79 27-67-11. (1) Every person maintaining a place of business,
80 or doing business, in this state, shall collect the tax imposed by
81 this article from the purchaser and remit the tax to the
82 commissioner as hereinafter provided. Failure to collect the tax
83 from the purchaser shall not relieve the seller of liability for
84 payment of the tax.

85 (2) Any person selling tangible personal property that does
86 not maintain a place of business in this state may be authorized
87 by the commissioner to collect the tax from customers in
88 Mississippi who are liable for its payment, and such person shall
89 remit the tax to the commissioner in the same manner and subject
90 to the same requirements as a person maintaining a place of
91 business or doing business within this state. Such authority may
92 be cancelled at any time when, in the judgment of the
93 commissioner, the tax can be collected more effectively from the
94 purchaser in this state. When the tax has been collected from the

95 purchaser, the seller shall be liable for payment of the tax to
96 the commissioner.

97 (3) Every person required or authorized to collect the tax
98 shall add to the sales price of tangible personal property or
99 services the amount of the tax imposed on purchaser for the use,
100 storage, or consumption thereof, and, when so added, the tax shall
101 be a debt from the purchaser to the seller until paid, and shall
102 be collectible at law in the same manner as other debts. It shall
103 be unlawful for any person to advertise, hold out, or state to the
104 public or to any customer that the tax herein imposed will be
105 assumed or absorbed by the seller or that any part thereof will be
106 refunded. Said tax shall be stated separately from the sales
107 price on the sales invoice and shown separately on the seller's
108 records. The purchaser shall pay the tax to the seller as trustee
109 for and on account of the state.

110 (4) If a seller makes a retail sale of a farm tractor or
111 farm implements to a person and collects the tax at the rate
112 provided in Section 27-65-17 based upon written documentation from
113 the purchaser indicating that the purchaser is a farmer and will
114 use the items purchased for agricultural purposes, the seller
115 shall not be liable for any additional tax due if the commission
116 determines that the sale was not made to a farmer for agricultural
117 purposes.

118 SECTION 3. This act shall take effect and be in force from
119 and after July 1, 2001.