

By: Representative Ellzey

To: Ways and Means

HOUSE BILL NO. 247

1 AN ACT TO AMEND SECTION 27-65-21, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE THAT THE RATE OF THE CONTRACTORS TAX SHALL BE 3-1/2% ON
 3 CONTRACTS FOR GRADING, EXCAVATING, DITCHING, DREDGING OR
 4 LANDSCAPING IF SUCH A CONTRACT IS PERFORMED FOR A FARMER ON LAND
 5 OWNED BY THE FARMER AND INVOLVES ONLY PERFORMING WORK RELATED TO
 6 SOIL, TIMBER OR CROPS THAT ARE PART OF THE LAND AND NOT PURCHASED
 7 OR BROUGHT ONTO THE LAND FOR THE PERFORMANCE OF THE CONTRACT, AND
 8 IF THE PERFORMANCE OF SUCH ACTIVITIES IS NOT EXEMPT UNDER THE
 9 STATE SALES TAX LAW AND THE TOTAL CONTRACT PRICE OR COMPENSATION
 10 RECEIVED EXCEEDS \$5,000.00; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 27-65-21, Mississippi Code of 1972, is
 13 amended as follows:

14 27-65-21. (1) (a) (i) Upon every person engaging or
 15 continuing in this state in the business of contracting or
 16 performing a contract or engaging in any of the activities, or
 17 similar activities, listed below for a price, commission, fee or
 18 wage, there is hereby levied, assessed and shall be collected a
 19 tax equal to three and one-half percent (3-1/2%) of the total
 20 contract price or compensation received, including all charges
 21 related to the contract such as finance charges and late charges,
 22 from constructing, building, erecting, repairing, grading,
 23 excavating, drilling, exploring, testing or adding to any
 24 building, highway, street, sidewalk, bridge, culvert, sewer,
 25 irrigation or water system, drainage or dredging system, levee or
 26 levee system or any part thereof, railway, reservoir, dam, power
 27 plant, electrical system, air conditioning system, heating system,
 28 transmission line, pipeline, tower, dock, storage tank, wharf,
 29 excavation, grading, water well, any other improvement or
 30 structure or any part thereof when the compensation received
 31 exceeds Ten Thousand Dollars (\$10,000.00). Such activities shall



32 not include constructing, repairing or adding to property which
33 retains its identity as personal property. However, if a contract
34 for grading, excavating, ditching, dredging or landscaping is
35 performed for a farmer on land owned by the farmer and the
36 contract involves only performing work related to soil, timber or
37 crops that are part of the land and not purchased or brought onto
38 the land for the performance of the contract, the rate of tax on
39 the total contract price or compensation received shall be three
40 and one-half percent (3-1/2%) if the performance of such
41 activities is not exempt under Section 27-65-103 and the total
42 contract price or compensation received exceeds Five Thousand
43 Dollars (\$5,000.00). The tax imposed in this section is levied
44 upon the prime contractor and shall be paid by him.

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

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

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

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



64 contract price for the project exceeds the sum of One Hundred
65 Million Dollars (\$100,000,000.00).

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

72 (c) Sales of materials and services for use in the
73 activities hereby excluded from taxes imposed by this section,
74 except services used in activities excluded pursuant to paragraph
75 (b)(iii) of this subsection, shall be subject to taxes imposed by
76 other sections in this chapter.

77 (2) Upon every person engaging or continuing in this state
78 in the business of contracting or performing a contract of
79 redrilling, or working over, or of drilling an oil well or a gas
80 well, regardless of whether such well is productive or
81 nonproductive, for any valuable consideration, there is hereby
82 levied, assessed and shall be collected a tax equal to three and
83 one-half percent (3-1/2%) of the total contract price or
84 compensation received when such compensation exceeds Ten Thousand
85 Dollars (\$10,000.00).

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

88 "Operator" -- One who holds all or a fraction of the working
89 or operating rights in an oil or gas lease, and is obligated for
90 the costs of production either as a fee owner or under a lease or
91 any other form of contract creating working or operating rights.

92 "Bottom-hole contribution" -- Money or property given to an
93 operator for his use in the drilling of a well on property in
94 which the payor has no interest. The contribution is payable
95 whether the well is productive or nonproductive.



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

100 "Turnkey drilling contract" -- A contract for the drilling of
101 a well which requires the driller to drill a well and, if
102 commercial production is obtained, to equip the well to such stage
103 that the lessee or operator may turn a valve and the oil will flow
104 into a tank.

105 "Total contract price or compensation received" -- As related
106 to oil and gas well contractors, shall include amounts received as
107 compensation for all costs of performing a turnkey drilling
108 contract; amounts received or to be received under assignment as
109 dry-hole money or bottom-hole money; and shall mean and include
110 anything of value received by the contractor as remuneration for
111 services taxable hereunder. When the kind and amount of
112 compensation received by the contractor is contingent upon
113 production, the taxable amount shall be the total compensation
114 receivable in the event the well is a dry hole. The taxable
115 amount in the event of production when the contractor receives a
116 production interest of an undetermined value in lieu of a fixed
117 compensation shall be an amount equal to the compensation to the
118 contractor if the well had been a dry hole.

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

126 When a person engaged in any business on which a tax is
127 levied in Section 27-65-23, also qualifies as a contractor, and
128 contracts with the owner of any project to perform any services in



129 excess of Ten Thousand Dollars (\$10,000.00) or Five Thousand
130 Dollars (\$5,000.00), as appropriate, herein taxed, such person
131 shall pay the tax imposed by this section in lieu of the tax
132 imposed by Section 27-65-23.

133 Any person entering into any contract over Seventy-five
134 Thousand Dollars (\$75,000.00) as defined in this section shall,
135 before beginning the performance of such contract or contracts,
136 either pay the contractors' tax in advance, together with any use
137 taxes due under Section 27-67-5, or execute and file with the
138 Chairman of the State Tax Commission a good and valid bond in a
139 surety company authorized to do business in this state, or with
140 sufficient sureties to be approved by the commissioner conditioned
141 that all taxes which may accrue to the State of Mississippi under
142 this chapter, or under Section 27-67-5 and Section 27-7-5, will be
143 paid when due. Such bonds shall be either (a) "job bonds" which
144 guarantee payment when due of the aforesaid taxes resulting from
145 performance of a specified job or activity regardless of date of
146 completion; or (b) "blanket bonds" which guarantee payment when
147 due of the aforesaid taxes resulting from performance of all jobs
148 or activities taxable under this section begun during the period
149 specified therein, regardless of date of completion. The payments
150 of the taxes due or the execution and filing of a surety bond
151 shall be a condition precedent to the commencing work on any
152 contract taxed hereunder. Provided, that when any bond is filed
153 in lieu of the prepayment of the tax under this section, that the
154 tax shall be payable monthly on the amount received during the
155 previous month, and any use taxes due shall be payable on or
156 before the twentieth day of the month following the month in which
157 the property is brought into Mississippi.

158 Any person failing either to execute any bond herein
159 provided, or to pay the taxes in advance, before beginning the
160 performance of any contract shall be denied the right to perform
161 such contract until he complies with such requirements, and the



162 commissioner is hereby authorized to proceed either under Section
163 27-65-59, or by injunction to prevent any activity in the
164 performance of such contract until either a satisfactory bond is
165 executed and filed, or all taxes are paid in advance, and a
166 temporary injunction enjoining the execution of such contract
167 shall be granted without notice by any judge or chancellor now
168 authorized by law to grant injunctions.

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

178 **SECTION 2.** Nothing in this act shall affect or defeat any
179 claim, assessment, appeal, suit, right or cause of action for
180 taxes due or accrued under the sales tax laws before the date on
181 which this act becomes effective, whether such claims,
182 assessments, appeals, suits or actions have been begun before the
183 date on which this act becomes effective or are begun thereafter;
184 and the provisions of the sales tax laws are expressly continued
185 in full force, effect and operation for the purpose of the
186 assessment, collection and enrollment of liens for any taxes due
187 or accrued and the execution of any warrant under such laws before
188 the date on which this act becomes effective, and for the
189 imposition of any penalties, forfeitures or claims for failure to
190 comply with such laws.

191 **SECTION 3.** This act shall take effect and be in force from
192 and after July 1, 2003.

