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To: Ways and Means

HOUSE BILL NO. 1393

1 AN ACT TO AMEND SECTION 27-65-3, MISSISSIPPI CODE OF 1972, TO  
 2 PROVIDE THAT FINANCE CHARGES AND CARRYING CHARGES SHALL NOT BE  
 3 INCLUDED WITHIN THE MEANING OF GROSS PROCEEDS OF SALES FOR  
 4 PURPOSES OF THE STATE SALES TAX LAW; TO AMEND SECTION 27-67-3,  
 5 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FINANCE CHARGES AND  
 6 CARRYING CHARGES SHALL NOT BE INCLUDED WITHIN THE MEANING OF  
 7 PURCHASE PRICE OR SALES PRICE FOR PURPOSES OF THE STATE USE TAX  
 8 LAW; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 27-65-3, Mississippi Code of 1972, is  
 11 amended as follows:

12 27-65-3. The words, terms and phrases, when used in this  
 13 chapter, shall have the meanings ascribed to them herein.

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

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

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



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

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

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

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

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

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

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

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



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

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



95 cost of materials used, labor costs, interest paid, losses or any  
96 expense whatever.

97 "Gross income" shall also include the cost of property given  
98 as compensation when said property is consumed by a person  
99 performing a taxable service for the donor.

100 However, "gross income" or "gross proceeds of sales" shall  
101 not be construed to include the value of goods returned by  
102 customers when the total sale price is refunded either in cash or  
103 by credit, or cash discounts allowed and taken on sales. Cash  
104 discounts shall not include the value of trading stamps given with  
105 a sale of property.

106 (j) "Tangible personal property" means personal  
107 property perceptible to the human senses or by chemical analysis  
108 as opposed to real property or intangibles and shall include  
109 property sold on an installed basis which may become a part of  
110 real or personal property.

111 (k) "Installation charges" \* \* \* means \* \* \* the charge  
112 for the application of tangible personal property to real or  
113 personal property without regard to whether or not it becomes a  
114 part of the real property or retains its personal property  
115 classification. It shall include, but not be limited to, sales in  
116 place of roofing, tile, glass, carpets, drapes, fences, awnings,  
117 window air conditioning units, gasoline pumps, window guards,  
118 floor coverings, carports, store fixtures, aluminum and plastic  
119 siding, tombstones and similar personal property.

120 (l) "Newspaper" means a periodical which:

121 (i) Is not published primarily for advertising  
122 purposes and has not contained more than seventy-five percent  
123 (75%) advertising in more than one-half (1/2) of its issues during  
124 any consecutive twelve-month period excluding separate advertising  
125 supplements inserted into but separately identifiable from any  
126 regular issue or issues;



127                   (ii) Has been established and published  
128 continuously for at least twelve (12) months;  
129                   (iii) Is regularly issued at stated intervals no  
130 less frequently than once a week, bears a date of issue, and is  
131 numbered consecutively; provided, however, that publication on  
132 legal holidays of this state or of the United States and on  
133 Saturdays and Sundays shall not be required, and failure to  
134 publish not more than two (2) regular issues in any calendar year  
135 shall not exclude a periodical from this definition;  
136                   (iv) Is issued from a known office of publication,  
137 which shall be the principal public business office of the  
138 newspaper and need not be the place at which the periodical is  
139 printed and a newspaper shall be deemed to be "published" at the  
140 place where its known office of publication is located;  
141                   (v) Is formed of printed sheets; provided,  
142 however, that a periodical that is reproduced by the stencil,  
143 mimeograph or hectograph process shall not be considered to be a  
144 "newspaper"; and  
145                   (vi) Is originated and published for the  
146 dissemination of current news and intelligence of varied, broad  
147 and general public interest, announcements and notices, opinions  
148 as editorials on a regular or irregular basis, and advertising and  
149 miscellaneous reading matter.

150           The term "newspaper" shall include periodicals which are  
151 designed primarily for free circulation or for circulation at  
152 nominal rates as well as those which are designed for circulation  
153 at more than a nominal rate.

154           The term "newspaper" shall not include a publication or  
155 periodical which is published, sponsored by, is directly supported  
156 financially by, or is published to further the interests of, or is  
157 directed to, or has a circulation restricted in whole or in part  
158 to any particular sect, denomination, labor or fraternal  
159 organization or other special group or class or citizens.



160 For purposes of this paragraph, a periodical designed  
161 primarily for free circulation or circulation at nominal rates  
162 shall not be considered to be a newspaper unless such periodical  
163 has made an application for such status to the Tax Commission in  
164 the manner prescribed by the commission and has provided to the  
165 Tax Commission documentation satisfactory to the commission  
166 showing that such periodical meets the requirements of the  
167 definition of the term "newspaper." However, if such periodical  
168 has been determined to be a newspaper under action taken by the  
169 State Tax Commission on or before April 11, 1996, such periodical  
170 shall be considered to be a newspaper without the necessity of  
171 applying for such status. A determination by the State Tax  
172 Commission that a publication is a newspaper shall be limited to  
173 the application of this chapter and shall not establish that the  
174 publication is a newspaper for any other purpose.

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

177 27-67-3. Whenever used in this article, the words, phrases  
178 and terms shall have the meaning ascribed to them as follows:

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

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

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



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

194 (e) "Sale" or "purchase" means the exchange of  
195 properties for money or other consideration, and the barter of  
196 properties. Every closed transaction by which title to, or  
197 possession of, tangible personal property passes shall constitute  
198 a taxable event. A transaction whereby the possession of property  
199 is transferred but the seller retains title as security for  
200 payment of the selling price shall be deemed a sale.

201 (f) "Purchase price" or "sales price" means the total  
202 amount for which tangible personal property is purchased or sold,  
203 valued in money, including \* \* \* installation and service charges,  
204 and freight charges to the point of use within this state, without  
205 any deduction for cost of property sold, expenses or losses, or  
206 taxes of any kind except those exempt by the sales tax law.  
207 "Purchase price" or "sales price" shall not include cash discounts  
208 allowed and taken or merchandise returned by customers when the  
209 total sales price is refunded either in cash or by credit, and  
210 shall not include amounts allowed for a trade-in of similar  
211 property. "Purchase price" or "sales price" does not include  
212 finance charges, carrying charges or any other addition to the  
213 selling price as a result of deferred payments by the purchaser.

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

217 (h) "Value" means the estimated or assessed monetary  
218 worth of a thing or property. The value of property transferred  
219 into this state for sales promotion or advertising shall be an  
220 amount not less than the cost paid by the transferor or donor.  
221 The value of property which has been used in another state shall  
222 be determined by its cost less straight line depreciation provided  
223 that value shall never be less than twenty percent (20%) of the



224 cost or other method acceptable to the commissioner. On property  
225 imported by the manufacturer thereof for rental or lease within  
226 this state, value shall be the manufactured cost of the property  
227 and freight to the place of use in Mississippi.

228 (i) "Tangible personal property" means personal  
229 property perceptible to the human senses or by chemical analysis,  
230 as opposed to real property or intangibles. "Tangible personal  
231 property" shall include printed, mimeographed, multigraphed  
232 matter, or material reproduced in any other manner, and books,  
233 catalogs, manuals, publications or similar documents covering the  
234 services of collecting, compiling or analyzing information of any  
235 kind or nature. However, reports representing the work of persons  
236 such as lawyers, accountants, engineers and similar professionals  
237 shall not be included. "Tangible personal property" shall also  
238 include tangible advertising or sales promotion materials such as,  
239 but not limited to, displays, brochures, signs, catalogs, price  
240 lists, point of sale advertising materials and technical manuals.  
241 Tangible personal property shall also include computer software  
242 programs.

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

254 Any person doing business under the terms of the article by  
255 reason of coming under any one or more of the qualifying





256 provisions listed above shall be considered as doing business on  
257 all transactions involving sales to persons within this state.

258 (k) "Use" or "consumption" means the first use or  
259 intended use within this state of tangible personal property and  
260 shall include rental or loan by owners or use by lessees or other  
261 persons receiving benefits from use of the property. "Use" or  
262 "consumption" shall include the benefit realized or to be realized  
263 by persons importing or causing to be imported into this state  
264 tangible advertising or sales promotion materials.

265 (l) "Storage" means keeping tangible personal property  
266 in this state for subsequent use or consumption in this state.

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

280 **SECTION 4.** This act shall take effect and be in force from  
281 and after July 1, 2003.

