

By: Representative Snowden

To: Ways and Means

HOUSE BILL NO. 855

1 AN ACT TO AMEND SECTIONS 27-65-17 AND 27-65-111, MISSISSIPPI
2 CODE OF 1972, TO PHASE OUT THE SALES TAX ON RETAIL SALES OF FOOD
3 FOR HUMAN CONSUMPTION NOT PURCHASED WITH FOOD STAMPS BUT WHICH
4 WOULD BE EXEMPT FROM SALES TAX IF SUCH FOOD WERE PURCHASED WITH
5 FOOD STAMPS; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 27-65-17, Mississippi Code of 1972, is
8 amended as follows:

9 27-65-17. (1) Upon every person engaging or continuing
10 within this state in the business of selling any tangible personal
11 property whatsoever there is hereby levied, assessed and shall be
12 collected a tax equal to seven percent (7%) of the gross proceeds
13 of the retail sales of the business, except as otherwise provided
14 herein.

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

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

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

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

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

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

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

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

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

59 Any person exercising any privilege taxable under Section
60 27-65-15 and selling his natural resource products at wholesale or

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

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

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

84 (4) From and after July 1, 2005, in lieu of the tax levied
85 in subsection (1) of this section, retail sales of food for human
86 consumption not purchased with food stamps issued by the United
87 States Department of Agriculture, or other federal agency, but
88 which would be exempt under Section 27-65-111(o) from the taxes
89 imposed by this chapter if the food were purchased with food
90 stamps, shall be taxed as follows:

91 (a) From and after July 1, 2005, through June 30, 2006,
92 such sales shall be taxed at the rate of six percent (6%);

93 (b) From and after July 1, 2006, through June 30, 2007,
94 such sales shall be taxed at the rate of five percent (5%);

95 (c) From and after July 1, 2007, through June 30, 2008,
96 such sales shall be taxed at the rate of three percent (3%);

97 (d) From and after July 1, 2008, through June 30, 2009,
98 such sales shall be taxed at the rate of two percent (2%); and

99 (e) From and after July 1, 2009, such sales shall be
100 exempt from sales tax as provided in Section 27-65-111.

101 **SECTION 2.** Section 27-65-111, Mississippi Code of 1972, is
102 amended as follows:

103 27-65-111. The exemptions from the provisions of this
104 chapter which are not industrial, agricultural or governmental, or
105 which do not relate to utilities or taxes, or which are not
106 properly classified as one of the exemption classifications of
107 this chapter, shall be confined to persons or property exempted by
108 this section or by the Constitution of the United States or the
109 State of Mississippi. No exemptions as now provided by any other
110 section, except the classified exemption sections of this chapter
111 set forth herein, shall be valid as against the tax herein levied.
112 Any subsequent exemption from the tax levied hereunder, except as
113 indicated above, shall be provided by amendments to this section.

114 No exemption provided in this section shall apply to taxes
115 levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972.

116 The tax levied by this chapter shall not apply to the
117 following:

118 (a) Sales of tangible personal property and services to
119 hospitals or infirmaries owned and operated by a corporation or
120 association in which no part of the net earnings inures to the
121 benefit of any private shareholder, group or individual, and which
122 are subject to and governed by Sections 41-7-123 through 41-7-127.

123 Only sales of tangible personal property or services which
124 are ordinary and necessary to the operation of such hospitals and
125 infirmaries are exempted from tax.

126 (b) Sales of daily or weekly newspapers, and
127 periodicals or publications of scientific, literary or educational
128 organizations exempt from federal income taxation under Section
129 501(c)(3) of the Internal Revenue Code of 1954, as it exists as of
130 March 31, 1975, and subscription sales of all magazines.

131 (c) Sales of coffins, caskets and other materials used
132 in the preparation of human bodies for burial.

133 (d) Sales of tangible personal property for immediate
134 export to a foreign country.

135 (e) Sales of tangible personal property to an
136 orphanage, old men's or ladies' home, supported wholly or in part
137 by a religious denomination, fraternal nonprofit organization or
138 other nonprofit organization.

139 (f) Sales of tangible personal property, labor or
140 services taxable under Sections 27-65-17, 27-65-19, and 27-65-23,
141 to a YMCA, YWCA, a Boys' or Girls' Club owned and operated by a
142 corporation or association in which no part of the net earnings
143 inures to the benefit of any private shareholder, group or
144 individual.

145 (g) Sales to elementary and secondary grade schools,
146 junior and senior colleges owned and operated by a corporation or
147 association in which no part of the net earnings inures to the
148 benefit of any private shareholder, group or individual, and which
149 are exempt from state income taxation, provided that this
150 exemption does not apply to sales of property or services which
151 are not to be used in the ordinary operation of the school, or
152 which are to be resold to the students or the public.

153 (h) The gross proceeds of retail sales and the use or
154 consumption in this state of drugs and medicines:

155 (i) Prescribed for the treatment of a human being
156 by a person authorized to prescribe the medicines, and dispensed
157 or prescription filled by a registered pharmacist in accordance
158 with law; or

159 (ii) Furnished by a licensed physician, surgeon,
160 dentist or podiatrist to his own patient for treatment of the
161 patient; or

162 (iii) Furnished by a hospital for treatment of any
163 person pursuant to the order of a licensed physician, surgeon,
164 dentist or podiatrist; or

165 (iv) Sold to a licensed physician, surgeon,
166 podiatrist, dentist or hospital for the treatment of a human
167 being; or

168 (v) Sold to this state or any political
169 subdivision or municipal corporation thereof, for use in the
170 treatment of a human being or furnished for the treatment of a
171 human being by a medical facility or clinic maintained by this
172 state or any political subdivision or municipal corporation
173 thereof.

174 "Medicines," as used in this paragraph (h), shall mean and
175 include any substance or preparation intended for use by external
176 or internal application to the human body in the diagnosis, cure,
177 mitigation, treatment or prevention of disease and which is
178 commonly recognized as a substance or preparation intended for
179 such use; provided that "medicines" do not include any auditory,
180 prosthetic, ophthalmic or ocular device or appliance, any dentures
181 or parts thereof or any artificial limbs or their replacement
182 parts, articles which are in the nature of splints, bandages,
183 pads, compresses, supports, dressings, instruments, apparatus,
184 contrivances, appliances, devices or other mechanical, electronic,
185 optical or physical equipment or article or the component parts
186 and accessories thereof, or any alcoholic beverage or any other
187 drug or medicine not commonly referred to as a prescription drug.

188 Notwithstanding the preceding sentence of this paragraph (h),
189 "medicines" as used in this paragraph (h), shall mean and include
190 sutures, whether or not permanently implanted, bone screws, bone
191 pins, pacemakers and other articles permanently implanted in the

192 human body to assist the functioning of any natural organ, artery,
193 vein or limb and which remain or dissolve in the body.

194 "Hospital," as used in this paragraph (h), shall have the
195 meaning ascribed to it in Section 41-9-3, Mississippi Code of
196 1972.

197 Insulin furnished by a registered pharmacist to a person for
198 treatment of diabetes as directed by a physician shall be deemed
199 to be dispensed on prescription within the meaning of this
200 paragraph (h).

201 (i) Retail sales of automobiles, trucks and
202 truck-tractors if exported from this state within forty-eight (48)
203 hours and registered and first used in another state.

204 (j) Sales of tangible personal property or services to
205 the Salvation Army and the Muscular Dystrophy Association, Inc.

206 (k) From July 1, 1985, through December 31, 1992,
207 retail sales of "alcohol blended fuel" as such term is defined in
208 Section 75-55-5. The gasoline-alcohol blend or the straight
209 alcohol eligible for this exemption shall not contain alcohol
210 distilled outside the State of Mississippi.

211 (l) Sales of tangible personal property or services to
212 the Institute for Technology Development.

213 (m) The gross proceeds of retail sales of food and
214 drink for human consumption made through vending machines serviced
215 by full line vendors from and not connected with other taxable
216 businesses.

217 (n) The gross proceeds of sales of motor fuel.

218 (o) Retail sales of food for human consumption
219 purchased with food stamps issued by the United States Department
220 of Agriculture, or other federal agency, from and after October 1,
221 1987, or from and after the expiration of any waiver granted
222 pursuant to federal law, the effect of which waiver is to permit
223 the collection by the state of tax on such retail sales of food
224 for human consumption purchased with food stamps.

225 (p) Sales of cookies for human consumption by the Girl
226 Scouts of America no part of the net earnings from which sales
227 inures to the benefit of any private group or individual.

228 (q) Gifts or sales of tangible personal property or
229 services to public or private nonprofit museums of art.

230 (r) Sales of tangible personal property or services to
231 alumni associations of state-supported colleges or universities.

232 (s) Sales of tangible personal property or services to
233 chapters of the National Association of Junior Auxiliaries, Inc.

234 (t) Sales of tangible personal property or services to
235 domestic violence shelters which qualify for state funding under
236 Sections 93-21-101 through 93-21-113.

237 (u) Sales of tangible personal property or services to
238 the National Multiple Sclerosis Society, Mississippi Chapter.

239 (v) Retail sales of food for human consumption
240 purchased with food instruments issued the Mississippi Band of
241 Choctaw Indians under the Women, Infants and Children Program
242 (WIC) funded by the United States Department of Agriculture.

243 (w) Sales of tangible personal property or services to
244 a private company, as defined in Section 57-61-5, which is making
245 such purchases with proceeds of bonds issued under Section 57-61-1
246 et seq., the Mississippi Business Investment Act.

247 (x) The gross collections from the operation of
248 self-service, coin-operated car washing equipment and sales of the
249 service of washing motor vehicles with portable high pressure
250 washing equipment on the premises of the customer.

251 (y) From and after July 1, 2009, retail sales of food
252 for human consumption not purchased with food stamps issued by the
253 United States Department of Agriculture, or other federal agency,
254 but which would be exempt under paragraph (o) of this section from
255 the taxes imposed by this chapter if the food were purchased with
256 food stamps.

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

270 **SECTION 4.** This act shall take effect and be in force from
271 and after July 1, 2004.