

By: Representative Fleming

To: Ways and Means

HOUSE BILL NO. 201

1 AN ACT TO AMEND SECTION 27-65-23, MISSISSIPPI CODE OF 1972,
 2 TO IMPOSE A SALES TAX ON THE RENTING OR LEASING OF REAL PROPERTY,
 3 EXCEPT WHEN THE RENTING OR LEASING IS FOR THE USE OF THE LAND
 4 ONLY; TO AMEND SECTION 27-65-75, MISSISSIPPI CODE OF 1972, TO
 5 PROVIDE THAT 50% OF THE SALES TAX REVENUE FROM SUCH RENTALS OR
 6 LEASES WITHIN A MUNICIPALITY SHALL BE ALLOCATED FOR DISTRIBUTION
 7 AND PAID TO SUCH MUNICIPALITY; TO PROVIDE THAT 25% OF THE SALES
 8 TAX REVENUE FROM SUCH RENTALS OR LEASES WITHIN A COUNTY,
 9 REGARDLESS OF WHETHER INSIDE OR OUTSIDE A MUNICIPALITY, SHALL BE
 10 ALLOCATED FOR DISTRIBUTION AND PAID TO SUCH COUNTY; TO AMEND
 11 SECTION 27-65-53, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;
 12 AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 27-65-23, Mississippi Code of 1972, is
 15 amended as follows:

16 27-65-23. Upon every person engaging or continuing in any of
 17 the following businesses or activities there is hereby levied,
 18 assessed and shall be collected a tax equal to seven percent (7%)
 19 of the gross income of the business, except as otherwise provided:

- 20 Air conditioning installation or repairs;
- 21 Automobile, aircraft, motorcycle, boat or any other
- 22 vehicle repairing or servicing;
- 23 Billiards, pool or domino parlors;
- 24 Bowling or tenpin alleys;
- 25 Burglar and fire alarm systems or services;
- 26 Car washing--automatic, self-service, or manual;
- 27 Computer software sales and services;
- 28 Cotton compresses or cotton warehouses;
- 29 Custom creosoting or treating, custom planing, custom
- 30 sawing;
- 31 Custom meat processing;

32 Electricians, electrical work, wiring, all repairs or
33 installation of electrical equipment;
34 Elevator or escalator installing, repairing or
35 servicing;
36 Film developing or photo finishing;
37 Foundries, machine or general repairing;
38 Furniture repairing or upholstering;
39 Grading, excavating, ditching, dredging or landscaping;
40 Hotels, motels, tourist courts or camps, trailer parks;
41 Insulating services or repairs;
42 Jewelry or watch repairing;
43 Laundering, cleaning, pressing or dyeing;
44 Marina services;
45 Mattress renovating;
46 Office and business machine repairing;
47 Parking garages and lots;
48 Plumbing or pipe fitting;
49 Public storage warehouses (There shall be no tax levied
50 on gross income of a public storage warehouse derived from the
51 temporary storage of tangible personal property in this state
52 pending shipping or mailing of the property to another state.);
53 Refrigerating equipment repairs;
54 Radio or television installing, repairing, or servicing;
55 Renting or leasing personal property used within this
56 state;
57 Services performed in connection with geophysical
58 surveying, exploring, developing, drilling, producing,
59 distributing, or testing of oil, gas, water and other mineral
60 resources;
61 Shoe repairing;
62 Storage lockers;
63 Telephone answering or paging services;
64 Termite or pest control services;

65 Tin and sheet metal shops;
66 TV cable systems, subscription TV services, and other
67 similar activities;
68 Vulcanizing, repairing or recapping of tires or tubes;
69 Welding; and
70 Woodworking or wood turning shops.

71 Income from services taxed herein performed for electric
72 power associations in the ordinary and necessary operation of
73 their generating or distribution systems shall be taxed at the
74 rate of one percent (1%).

75 Income from services taxed herein performed on materials for
76 use in track or track structures to a railroad whose rates are
77 fixed by the Interstate Commerce Commission or the Mississippi
78 Public Service Commission shall be taxed at the rate of three
79 percent (3%).

80 Income from the renting or leasing of real property, except
81 when the renting or leasing is for the use of the land only, shall
82 be taxed at the rate of one percent (1%).

83 Income from renting or leasing tangible personal property
84 used within this state shall be taxed at the same rates as sales
85 of the same property.

86 Persons doing business in this state who rent transportation
87 equipment with a situs within or without the state to common,
88 contract or private commercial carriers are taxed on that part of
89 the income derived from use within this state. If specific
90 accounting is impracticable, a formula may be used with approval
91 of the commissioner.

92 A lessor may deduct from the tax computed on the rental
93 income from tangible personal property a credit for sales or use
94 tax paid to this state at the time of purchase of the specific
95 personal property being leased or rented until such credit has
96 been exhausted.

97 Charges for custom processing and repairing services may be
98 excluded from gross taxable income when the property on which the
99 service was performed is delivered to the customer in another
100 state either by common carrier or in the seller's equipment.

101 When a taxpayer performs unitary services covered by this
102 section, which are performed both in intrastate and interstate
103 commerce, the commissioner is hereby invested with authority to
104 formulate in each particular case and to fix for such taxpayer in
105 each instance formulae of apportionment which will apportion to
106 this state, for taxation, that portion of the services which are
107 performed within the State of Mississippi.

108 **SECTION 2.** Section 27-65-75, Mississippi Code of 1972, is
109 amended as follows:

110 27-65-75. On or before the fifteenth day of each month, the
111 revenue collected under the provisions of this chapter during the
112 preceding month shall be paid and distributed as follows:

113 (1) On or before August 15, 1992, and each succeeding month
114 thereafter through July 15, 1993, eighteen percent (18%) of the
115 total sales tax revenue collected during the preceding month under
116 the provisions of this chapter, except that collected under the
117 provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on
118 business activities within a municipal corporation shall be
119 allocated for distribution to the municipality and paid to the
120 municipal corporation. On or before August 15, 1993, and each
121 succeeding month thereafter through July 15, 2005, eighteen and
122 one-half percent (18-1/2%) of the total sales tax revenue
123 collected during the preceding month under the provisions of this
124 chapter, except that collected under the provisions of Sections
125 27-65-15, 27-65-19(3) and 27-65-21, on business activities within
126 a municipal corporation shall be allocated for distribution to the
127 municipality and paid to the municipal corporation. On or before
128 August 15, 2005, and each succeeding month thereafter, eighteen
129 and one-half percent (18-1/2%) of the total sales tax revenue

130 collected during the preceding month under the provisions of this
131 chapter, except that collected under the provisions of Sections
132 27-65-15, 27-65-19(3), 27-65-21, and that collected under the
133 provisions of 27-65-23 from the rental or lease of real property,
134 on business activities within a municipal corporation and fifty
135 percent (50%) of the sales tax revenue collected during the
136 preceding month under the provisions of Section 27-65-23 from the
137 rental or lease of real property within a municipal corporation
138 shall be allocated for distribution to such municipality and paid
139 to such municipal corporation.

140 A municipal corporation, for the purpose of distributing the
141 tax under this subsection, shall mean and include all incorporated
142 cities, towns and villages.

143 Monies allocated for distribution and credited to a municipal
144 corporation under this subsection may be pledged as security for
145 any loan received by the municipal corporation for the purpose of
146 capital improvements as authorized under Section 57-1-303, or
147 loans as authorized under Section 57-44-7, or water systems
148 improvements as authorized under Section 41-3-16.

149 In any county having a county seat that is not an
150 incorporated municipality, the distribution provided under this
151 subsection shall be made as though the county seat was an
152 incorporated municipality; however, the distribution to the
153 municipality shall be paid to the county treasury in which the
154 municipality is located, and those funds shall be used for road,
155 bridge and street construction or maintenance in the county.

156 (2) On or before September 15, 1987, and each succeeding
157 month thereafter, from the revenue collected under this chapter
158 during the preceding month One Million One Hundred Twenty-five
159 Thousand Dollars (\$1,125,000.00) shall be allocated for
160 distribution to municipal corporations as defined under subsection
161 (1) of this section in the proportion that the number of gallons
162 of gasoline and diesel fuel sold by distributors to consumers and

163 retailers in each such municipality during the preceding fiscal
164 year bears to the total gallons of gasoline and diesel fuel sold
165 by distributors to consumers and retailers in municipalities
166 statewide during the preceding fiscal year. The State Tax
167 Commission shall require all distributors of gasoline and diesel
168 fuel to report to the commission monthly the total number of
169 gallons of gasoline and diesel fuel sold by them to consumers and
170 retailers in each municipality during the preceding month. The
171 State Tax Commission shall have the authority to promulgate such
172 rules and regulations as is necessary to determine the number of
173 gallons of gasoline and diesel fuel sold by distributors to
174 consumers and retailers in each municipality. In determining the
175 percentage allocation of funds under this subsection for the
176 fiscal year beginning July 1, 1987, and ending June 30, 1988, the
177 State Tax Commission may consider gallons of gasoline and diesel
178 fuel sold for a period of less than one (1) fiscal year. For the
179 purposes of this subsection, the term "fiscal year" means the
180 fiscal year beginning July 1 of a year.

181 (3) On or before September 15, 1987, and on or before the
182 fifteenth day of each succeeding month, until the date specified
183 in Section 65-39-35, the proceeds derived from contractors' taxes
184 levied under Section 27-65-21 on contracts for the construction or
185 reconstruction of highways designated under the highway program
186 created under Section 65-3-97 shall, except as otherwise provided
187 in Section 31-17-127, be deposited into the State Treasury to the
188 credit of the State Highway Fund to be used to fund that highway
189 program. The Mississippi Department of Transportation shall
190 provide to the State Tax Commission such information as is
191 necessary to determine the amount of proceeds to be distributed
192 under this subsection.

193 (4) On or before August 15, 1994, and on or before the
194 fifteenth day of each succeeding month through July 15, 1999, from
195 the proceeds of gasoline, diesel fuel or kerosene taxes as

196 provided in Section 27-5-101(a)(ii)1, Four Million Dollars
197 (\$4,000,000.00) shall be deposited in the State Treasury to the
198 credit of a special fund designated as the "State Aid Road Fund,"
199 created by Section 65-9-17. On or before August 15, 1999, and on
200 or before the fifteenth day of each succeeding month, from the
201 total amount of the proceeds of gasoline, diesel fuel or kerosene
202 taxes apportioned by Section 27-5-101(a)(ii)1, Four Million
203 Dollars (\$4,000,000.00) or an amount equal to twenty-three and
204 one-fourth percent (23.25%) of those funds, whichever is the
205 greater amount, shall be deposited in the State Treasury to the
206 credit of the "State Aid Road Fund," created by Section 65-9-17.
207 Those funds shall be pledged to pay the principal of and interest
208 on state aid road bonds heretofore issued under Sections 19-9-51
209 through 19-9-77, in lieu of and in substitution for the funds
210 previously allocated to counties under this section. Those funds
211 may not be pledged for the payment of any state aid road bonds
212 issued after April 1, 1981; however, this prohibition against the
213 pledging of any such funds for the payment of bonds shall not
214 apply to any bonds for which intent to issue those bonds has been
215 published, for the first time, as provided by law before March 29,
216 1981. From the amount of taxes paid into the special fund under
217 this subsection and subsection (9) of this section, there shall be
218 first deducted and paid the amount necessary to pay the expenses
219 of the Office of State Aid Road Construction, as authorized by the
220 Legislature for all other general and special fund agencies. The
221 remainder of the fund shall be allocated monthly to the several
222 counties in accordance with the following formula:

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

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

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

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

236 The amount of funds allocated to any county under this
237 subsection for any fiscal year after fiscal year 1994 shall not be
238 less than the amount allocated to the county for fiscal year 1994.
239 Monies allocated to a county from the State Aid Road Fund for
240 fiscal year 1995 or any fiscal year thereafter that exceed the
241 amount of funds allocated to that county from the State Aid Road
242 Fund for fiscal year 1994, first must be expended by the county
243 for replacement or rehabilitation of bridges on the state aid road
244 system that have a sufficiency rating of less than twenty-five
245 (25), according to National Bridge Inspection standards before
246 the monies may be approved for expenditure by the State Aid Road
247 Engineer on other projects that qualify for the use of state aid
248 road funds.

249 Any reference in the general laws of this state or the
250 Mississippi Code of 1972 to Section 27-5-105 shall mean and be
251 construed to refer and apply to subsection (4) of Section
252 27-65-75.

253 (5) One Million Six Hundred Sixty-six Thousand Six Hundred
254 Sixty-six Dollars (\$1,666,666.00) each month shall be paid into
255 the special fund known as the "State Public School Building Fund"
256 created and existing under the provisions of Sections 37-47-1
257 through 37-47-67. Those payments into that fund are to be made on
258 the last day of each succeeding month hereafter.

259 (6) An amount each month beginning August 15, 1983, through
260 November 15, 1986, as specified in Section 6 of Chapter 542, Laws
261 of 1983, shall be paid into the special fund known as the

262 Correctional Facilities Construction Fund created in Section 6 of
263 Chapter 542, Laws of 1983.

264 (7) On or before August 15, 1992, and each succeeding month
265 thereafter through July 15, 2000, two and two hundred sixty-six
266 one-thousandths percent (2.266%) of the total sales tax revenue
267 collected during the preceding month under the provisions of this
268 chapter, except that collected under the provisions of Section
269 27-65-17(2) shall be deposited by the commission into the School
270 Ad Valorem Tax Reduction Fund created under Section 37-61-35. On
271 or before August 15, 2000, and each succeeding month thereafter,
272 two and two hundred sixty-six one-thousandths percent (2.266%) of
273 the total sales tax revenue collected during the preceding month
274 under the provisions of this chapter, except that collected under
275 the provisions of Section 27-65-17(2), shall be deposited into the
276 School Ad Valorem Tax Reduction Fund created under Section
277 37-61-35 until such time that the total amount deposited into the
278 fund during a fiscal year equals Forty-two Million Dollars
279 (\$42,000,000.00). Thereafter, the amounts diverted under this
280 subsection (7) during the fiscal year in excess of Forty-two
281 Million Dollars (\$42,000,000.00) shall be deposited into the
282 Education Enhancement Fund created under Section 37-61-33 for
283 appropriation by the Legislature as other education needs and
284 shall not be subject to the percentage appropriation requirements
285 set forth in Section 37-61-33.

286 (8) On or before August 15, 1992, and each succeeding month
287 thereafter, nine and seventy-three one-thousandths percent
288 (9.073%) of the total sales tax revenue collected during the
289 preceding month under the provisions of this chapter, except that
290 collected under the provisions of Section 27-65-17(2), shall be
291 deposited into the Education Enhancement Fund created under
292 Section 37-61-33.

293 (9) On or before August 15, 1994, and each succeeding month
294 thereafter, from the revenue collected under this chapter during

295 the preceding month, Two Hundred Fifty Thousand Dollars
296 (\$250,000.00) shall be paid into the State Aid Road Fund.

297 (10) On or before August 15, 1994, and each succeeding month
298 thereafter through August 15, 1995, from the revenue collected
299 under this chapter during the preceding month, Two Million Dollars
300 (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad
301 Valorem Tax Reduction Fund established in Section 27-51-105.

302 (11) Notwithstanding any other provision of this section to
303 the contrary, on or before February 15, 1995, and each succeeding
304 month thereafter, the sales tax revenue collected during the
305 preceding month under the provisions of Section 27-65-17(2) and
306 the corresponding levy in Section 27-65-23 on the rental or lease
307 of private carriers of passengers and light carriers of property
308 as defined in Section 27-51-101 shall be deposited, without
309 diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund
310 established in Section 27-51-105.

311 (12) Notwithstanding any other provision of this section to
312 the contrary, on or before August 15, 1995, and each succeeding
313 month thereafter, the sales tax revenue collected during the
314 preceding month under the provisions of Section 27-65-17(1) on
315 retail sales of private carriers of passengers and light carriers
316 of property, as defined in Section 27-51-101 and the corresponding
317 levy in Section 27-65-23 on the rental or lease of these vehicles,
318 shall be deposited, after diversion, into the Motor Vehicle Ad
319 Valorem Tax Reduction Fund established in Section 27-51-105.

320 (13) On or before July 15, 1994, and on or before the
321 fifteenth day of each succeeding month thereafter, that portion of
322 the avails of the tax imposed in Section 27-65-22 that is derived
323 from activities held on the Mississippi state fairgrounds complex,
324 shall be paid into a special fund that is created in the State
325 Treasury and shall be expended upon legislative appropriation
326 solely to defray the costs of repairs and renovation at the Trade
327 Mart and Coliseum.

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

335 (15) Notwithstanding any other provision of this section to
336 the contrary, on or before September 15, 2000, and each succeeding
337 month thereafter, the sales tax revenue collected during the
338 preceding month under the provisions of Section 27-65-19(1)(f) and
339 (g)(i)2, shall be deposited, without diversion, into the
340 Telecommunications Ad Valorem Tax Reduction Fund established in
341 Section 27-38-7.

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

349 (17) Notwithstanding any other provision of this section to
350 the contrary, on or before April 15, 2002, and each succeeding
351 month thereafter, the sales tax revenue collected during the
352 preceding month under Section 27-65-23 on sales of parking
353 services of parking garages and lots at airports shall be
354 deposited, without diversion, into the special fund created under
355 Section 27-5-101(d).

356 (18) On or before August 15, 2005, and each succeeding month
357 thereafter through July 15, 2006, from the sales tax revenue
358 collected during the preceding month under the provisions of this
359 chapter, Two Million Five Hundred Thousand Dollars (\$2,500,000.00)

360 shall be deposited into the Special Funds Transfer Fund created in
361 Section 4 of Chapter 556, Laws of 2003.

362 (19) On or before August 15, 2004, and each succeeding month
363 thereafter, twenty-five percent (25%) of the total sales tax
364 revenue collected during the preceding month under the provisions
365 of Section 27-65-23 from the rental or lease of real property
366 within a county, regardless of whether inside or outside any
367 municipal corporation, shall be allocated for distribution to such
368 county and paid to such county. The amount paid to any county
369 under this subsection (19) shall be in addition to any other funds
370 allocated for distribution to the various counties under this
371 section.

372 (20) The remainder of the amounts collected under the
373 provisions of this chapter shall be paid into the State Treasury
374 to the credit of the General Fund.

375 (21) It shall be the duty of the municipal officials of any
376 municipality that expands its limits, or of any community that
377 incorporates as a municipality, to notify the commissioner of
378 that action thirty (30) days before the effective date. Failure
379 to so notify the commissioner shall cause the municipality to
380 forfeit the revenue that it would have been entitled to receive
381 during this period of time when the commissioner had no knowledge
382 of the action. If any funds have been erroneously disbursed to
383 any municipality or county or any overpayment of tax is recovered
384 by the taxpayer, the commissioner may make correction and adjust
385 the error or overpayment with the municipality by withholding the
386 necessary funds from any later payment to be made to the
387 municipality or county.

388 **SECTION 3.** Section 27-65-53, Mississippi Code of 1972, is
389 amended as follows:

390 27-65-53. If the commissioner finds that the taxpayer has
391 overpaid his tax for any reason and the taxpayer has discontinued
392 business and there is no subsequent liability upon which the

393 excess may be credited, or if the amount of the excess so paid
394 shall exceed the estimated liability for the next twelve (12)
395 months, the excess shall be refunded to the taxpayer. Such amount
396 shall be certified to the State Auditor of Public Accounts by the
397 commission. The said auditor is hereby authorized to make such
398 investigation and audit of the claim as he finds necessary. If he
399 finds that the commissioner is correct in his determination, the
400 auditor may issue his warrant to the State Treasurer in favor of
401 the taxpayer for the amount of tax erroneously paid into the State
402 Treasury, such refunds to be made from current sales tax
403 collections. If part of the overpayment has been disbursed to any
404 municipality or county, under authority of Section 27-65-75, the
405 municipality or county, having erroneously received the money,
406 shall adjust the amount with the commissioner, or the overpayment
407 may be withheld by the state from any funds due by the state to
408 the municipality or county.

409 Provided, that where the taxpayer has overpaid his tax, the
410 commissioner may give credit for same and allow the taxpayer to
411 take credit on a subsequent return or, if necessary, in his
412 discretion, have the taxpayer file for a refund as provided
413 herein.

414 If any overpayment of tax as reflected in an application or
415 amended return, or both, filed by the taxpayer, and verified by
416 the commissioner or otherwise determined to be due by the
417 commissioner or commission, is not refunded or credited to a
418 taxpayer's account within ninety (90) days after the application
419 or amended return is filed or the date the commission or
420 commissioner determines a refund is due, whichever is later,
421 interest at the rate of one percent (1%) per month shall be
422 allowed on such overpayment computed for the period after
423 expiration of the ninety-day period provided herein to the date of
424 payment.

425 **SECTION 4.** This act shall take effect and be in force from
426 and after July 1, 2005.