

By: Representatives Robinson (84th), Horne

To: Ways and Means

HOUSE BILL NO. 374

1 AN ACT TO AMEND SECTION 27-65-31, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT IF A DEALER IN FARM TRACTORS OR FARM IMPLEMENTS
3 REQUIRES A PERSON WHO STATES HE IS ELIGIBLE FOR THE REDUCED SALES
4 TAX RATE AUTHORIZED FOR SALES OF SUCH EQUIPMENT TO FARMERS TO SIGN
5 AN AFFIDAVIT STATING THAT THE PERSON IS ELIGIBLE FOR SUCH REDUCED
6 RATE, THE DEALER SHALL NOT BE LIABLE FOR ADDITIONAL SALES TAXES
7 DUE IF THE PERSON WHO SIGNED THE AFFIDAVIT IS LATER DETERMINED NOT
8 TO BE ELIGIBLE FOR THE REDUCED RATE; TO PROVIDE THAT THE PERSON
9 WHO SIGNED THE AFFIDAVIT SHALL BE LIABLE FOR ANY ADDITIONAL SALES
10 TAX DUE ON THE PURCHASE; AND FOR RELATED PURPOSES.

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

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

14 27-65-31. (1) Except as otherwise provided in subsection
15 (9) of this section, any person liable for a privilege tax levied
16 and assessed by this chapter except the taxes levied by Sections
17 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of 1972,
18 shall add the amount of such tax due by him to the sales price or
19 gross income and, in addition thereto, shall collect, insofar as
20 practicable, the amount of the tax due by him from the purchaser
21 at the time the sales price or gross income is collected.

22 (2) The commissioner is authorized, in his discretion, to
23 prescribe by rule or regulation, brackets or schedules by which
24 the applicable tax shall be collected from the purchaser.

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

30 (4) Except as otherwise provided in subsection (9) of this
31 section, it shall be unlawful for any person, who is liable for a

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

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

44 (6) Nothing in this section with reference to the collection
45 of the tax from the customer shall be construed to impair,
46 abridge, alter or affect the obligation of any contract in
47 existence at the time it becomes effective.

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

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

65 other penalties and/or interest otherwise imposed. For purposes
66 of this section there shall be a presumption that the taxpayer
67 collected the tax from the customer or purchaser.

68 (9) If a person states that the reduced sales tax rate on
69 farm tractors or farm implements for farmers provided for in
70 Section 27-65-17 applies to a purchase the person is making, and a
71 dealer of farm tractors or farm implements requires the person to
72 execute an affidavit stating that such person is a farmer and the
73 purchase is otherwise eligible for the reduced sales tax rate:

74 (a) The dealer shall not be liable for additional sales
75 taxes due on the purchase of a farm tractor or farm implements if
76 it is later determined that the person was not eligible for the
77 reduced sales tax rate; and

78 (b) The person who signed the affidavit shall be liable
79 for the additional sales tax due.

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

84 **SECTION 2.** This act shall take effect and be in force from
85 and after July 1, 2005.