

By: Representative Watson

To: Ways and Means

HOUSE BILL NO. 1608

1 AN ACT TO AMEND SECTION 27-65-21, MISSISSIPPI CODE OF 1972,
2 TO INCREASE FROM \$10,000.00 TO \$75,000.00 THE AMOUNT OF
3 COMPENSATION NECESSARY TO BE RECEIVED BY A CONTRACTOR IN ORDER TO
4 IMPOSE THE CONTRACTOR'S TAX; TO REMOVE THE PROVISION THAT ALLOWS A
5 CONTRACTOR TO OBTAIN A BLANKET BOND IN LIEU OF THE PAYMENT OF
6 TAXES IN ADVANCE OR OBTAINING A JOB BOND; AND FOR RELATED
7 PURPOSES.

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

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

11 27-65-21. (1) (a) (i) Upon every person engaging or
12 continuing in this state in the business of contracting or
13 performing a contract or engaging in any of the activities, or
14 similar activities, listed below for a price, commission, fee or
15 wage, there is hereby levied, assessed and shall be collected a
16 tax equal to three and one-half percent (3-1/2%) of the total
17 contract price or compensation received, including all charges
18 related to the contract such as finance charges and late charges,
19 from constructing, building, erecting, repairing, grading,
20 excavating, drilling, exploring, testing or adding to any
21 building, highway, street, sidewalk, bridge, culvert, sewer,
22 irrigation or water system, drainage or dredging system, levee or
23 levee system or any part thereof, railway, reservoir, dam, power
24 plant, electrical system, air conditioning system, heating system,
25 transmission line, pipeline, tower, dock, storage tank, wharf,
26 excavation, grading, water well, any other improvement or
27 structure or any part thereof when the compensation received
28 exceeds Seventy-five Thousand Dollars (\$75,000.00). Such
29 activities shall not include constructing, repairing or adding to

30 property which retains its identity as personal property. The tax
31 imposed in this section is levied upon the prime contractor and
32 shall be paid by him.

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

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

40 (i) The contract price or compensation received
41 for constructing, building, erecting, repairing or adding to any
42 building, electrical system, air conditioning system, heating
43 system or any other improvement or structure which is used for or
44 primarily in connection with a residence or dwelling place for
45 human beings. Such residences shall include homes, apartment
46 buildings, condominiums, mobile homes, summer cottages, fishing
47 and hunting camp buildings and similar buildings, but shall not
48 include hotels, motels, hospitals, nursing or retirement homes,
49 tourist cottages or other commercial establishments.

50 (ii) The portion of the total contract price
51 attributable to design or engineering services if the total
52 contract price for the project exceeds the sum of One Hundred
53 Million Dollars (\$100,000,000.00).

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

60 (c) Sales of materials and services for use in the
61 activities hereby excluded from taxes imposed by this section,
62 except services used in activities excluded pursuant to paragraph

63 (b)(iii) of this subsection, shall be subject to taxes imposed by
64 other sections in this chapter.

65 (2) Upon every person engaging or continuing in this state
66 in the business of contracting or performing a contract of
67 redrilling, or working over, or of drilling an oil well or a gas
68 well, regardless of whether such well is productive or
69 nonproductive, for any valuable consideration, there is hereby
70 levied, assessed and shall be collected a tax equal to three and
71 one-half percent (3-1/2%) of the total contract price or
72 compensation received when such compensation exceeds Seventy-five
73 Thousand Dollars (\$75,000.00).

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

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

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

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

88 "Turnkey drilling contract" -- A contract for the drilling of
89 a well which requires the driller to drill a well and, if
90 commercial production is obtained, to equip the well to such stage
91 that the lessee or operator may turn a valve and the oil will flow
92 into a tank.

93 "Total contract price or compensation received" -- As related
94 to oil and gas well contractors, shall include amounts received as
95 compensation for all costs of performing a turnkey drilling

96 contract; amounts received or to be received under assignment as
97 dry-hole money or bottom-hole money; and shall mean and include
98 anything of value received by the contractor as remuneration for
99 services taxable hereunder. When the kind and amount of
100 compensation received by the contractor is contingent upon
101 production, the taxable amount shall be the total compensation
102 receivable in the event the well is a dry hole. The taxable
103 amount in the event of production when the contractor receives a
104 production interest of an undetermined value in lieu of a fixed
105 compensation shall be an amount equal to the compensation to the
106 contractor if the well had been a dry hole.

107 (3) (a) When the work to be performed under any contract is
108 sublet by the prime contractor to different persons, or in
109 separate contracts to the same persons, each such subcontractor
110 performing any part of said work shall be liable for the amount of
111 the tax which accrues on account of the work performed by such
112 person when the tax heretofore imposed has not been paid upon the
113 whole contract by the prime contractor.

114 (b) When a person engaged in any business on which a
115 tax is levied in Section 27-65-23, also qualifies as a contractor,
116 and contracts with the owner of any project to perform any
117 services in excess of Seventy-five Thousand Dollars (\$75,000.00)
118 herein taxed, such person shall pay the tax imposed by this
119 section in lieu of the tax imposed by Section 27-65-23.

120 (c) Any person entering into any contract over
121 Seventy-five Thousand Dollars (\$75,000.00) as defined in this
122 section shall, before beginning the performance of such contract
123 or contracts, either pay the contractors' tax in advance, together
124 with any use taxes due under Section 27-67-5, or execute and file
125 with the commissioner a good and valid bond in a surety company
126 authorized to do business in this state, or with sufficient
127 sureties to be approved by the commissioner conditioned that all
128 taxes which may accrue to the State of Mississippi under this

129 chapter, or under Section 27-67-5 and Section 27-7-5, will be paid
130 when due. The bonds shall be * * * "job bonds" which guarantee
131 payment when due of the aforesaid taxes resulting from performance
132 of a specified job or activity regardless of date of
133 completion * * *. The payments of the taxes due or the execution
134 and filing of a surety bond shall be a condition precedent to the
135 commencing work on any contract taxed hereunder. Provided, that
136 when any bond is filed in lieu of the prepayment of the tax under
137 this section, that the tax shall be payable monthly on the amount
138 received during the previous month, and any use taxes due shall be
139 payable on or before the twentieth day of the month following the
140 month in which the property is brought into Mississippi.

141 (d) Any person failing either to execute a bond as
142 provided in this subsection, or to pay the taxes in advance,
143 before beginning the performance of any contract, shall be denied
144 the right to perform such contract until he complies with those
145 requirements, and the commissioner is hereby authorized to proceed
146 either under Section 27-65-59, or by injunction to prevent any
147 activity in the performance of such contract until either a
148 satisfactory bond is executed and filed, or all taxes are paid in
149 advance, and a temporary injunction enjoining the execution of
150 such contract shall be granted without notice by any judge or
151 chancellor now authorized by law to grant injunctions.

152 (e) Any person liable for a tax under this section may
153 apply for and obtain a material purchase certificate from the
154 commissioner which may entitle the holder to purchase materials
155 and services that are to become a component part of the structure
156 to be erected or repaired with no tax due. Provided, that the
157 contractor applying for the contractor's material purchase
158 certificate shall furnish the State Tax Commission a list of all
159 work sublet to others, indicating the amount of work to be
160 performed, and the names and addresses of each subcontractor.

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