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To: Ways and Means

HOUSE BILL NO. 1471

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

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

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

11 27-65-3. The words, terms and phrases, when used in this
12 chapter, shall have the meanings ascribed to them herein.

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

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

17 (c) "Person" means * * * any individual, firm,
18 copartnership, joint venture, association, corporation, promoter
19 of a temporary event, estate, trust or other group or combination
20 acting as a unit, and includes the plural as well as the singular
21 in number. "Person" shall include husband or wife or both where
22 joint benefits are derived from the operation of a business taxed
23 hereunder. "Person" shall also include any state, county,
24 municipal or other agency or association engaging in a business
25 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 include 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, carrying
66 charges, or any other addition to the selling price on account of
67 deferred payments by the purchaser, without any deduction
68 for * * * cost of property sold, other expenses or losses, or
69 taxes of any kind except those expressly exempt by this chapter.

70 Where a trade-in is taken as part payment on tangible
71 personal property sold, "gross proceeds of sales" shall include
72 only the difference received between the selling price of the
73 tangible personal property and the amount allowed for a trade-in
74 of property of the same kind. When the trade-in is subsequently
75 sold, the selling price thereof shall be included in "gross
76 proceeds of sales."

77 "Gross proceeds of sales" shall include the value of any
78 goods, wares, merchandise or property purchased at wholesale or
79 manufactured, and any mineral or natural resources produced which
80 are excluded from the tax levied by Section 27-65-15, which are
81 withdrawn or used from an established business or from the stock
82 in trade for consumption or any other use in the business or by
83 the owner.

84 "Gross proceeds of sales" shall not include bad check or
85 draft service charges as provided for in Section 97-19-57.

86 "Gross proceeds of sales" does not include delivery charges.

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

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

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

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

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

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

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

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

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

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

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

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

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

176 27-67-3. Whenever used in this article, the words, phrases
177 and terms shall have the meaning ascribed to them as follows:

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

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

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

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

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

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

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

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

223 imported by the manufacturer thereof for rental or lease within
224 this state, value shall be the manufactured cost of the
225 property * * *.

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

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

252 Any person doing business under the terms of the article by
253 reason of coming under any one or more of the qualifying
254 provisions listed above shall be considered as doing business on
255 all transactions involving sales to persons within this state.

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

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

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

278 **SECTION 4.** This act shall take effect and be in force from
279 and after July 1, 2006.