MISSISSIPPI LEGISLATURE REGULAR SESSION 2007

By: Representative Watson

To: Ways and Means

HOUSE BILL NO. 963

AN ACT TO AMEND SECTION 27-65-35, MISSISSIPPI CODE OF 1972, TO INCREASE THE TIME WITHIN WHICH THE CHAIRMAN OF THE STATE TAX COMMISSION MUST DEMAND PAYMENT OF SALES TAXES AND DAMAGES ASSESSED FOR FAILURE TO FILE A SALES TAX RETURN; TO INCREASE THE TIME WITHIN WHICH THE TAXPAYER MAY PAY THE TAX IN LIEU OF SUCH ASSESSMENT; TO AMEND SECTION 27-65-37, MISSISSIPPI CODE OF 1972, TO INCREASE THE TIME WITHIN WHICH THE CHAIRMAN OF THE STATE TAX COMMISSION MAY DEMAND PAYMENT OF TAXES, DAMAGES AND INTEREST FOR THE FAILURE OF A TAXPAYER TO PAY SALES TAXES; TO AMEND SECTION 27-65-9, MISSISSIPPI CODE OF 1972, TO CORRECT AN ERROR; TO AMEND SECTIONS 27-65-7 AND 27-65-17, MISSISSIPPI CODE OF 1972, TO REMOVE A REFERENCE TO A CODE SECTION THAT HAS BEEN REPEALED; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 27-65-35, Mississippi Code of 1972, is amended as follows:

27-65-35. If no return is made on or before the due date by any taxpayer required to make a return, the commissioner, as soon as practicable after the due date, shall make an assessment of taxes and damages from any information available, which shall be prima facie correct. The commissioner shall give written notice to the taxpayer of the tax and damages thus assessed and demand payment within thirty (30) days from the date of the notice. The notice shall be sent by mail to the taxpayer, or delivered by an agent of the commissioner either to the taxpayer or someone of suitable age and discretion at the taxpayer's place of business or residence. * * * However, * * * if the taxpayer shall file a return and pay the tax shown * * * to be due within thirty (30) days from the date of the assessment, the return and payment shall be accepted in lieu of the assessment.

SECTION 2. Section 27-65-37, Mississippi Code of 1972, is amended as follows:

27-65-37. If adequate records of the gross income or gross proceeds of sales are not maintained or invoices preserved as provided herein, or if an audit of the records of a taxpayer, or any return filed by him, or any other information discloses that taxes are due and unpaid, the commissioner shall make assessments of taxes, damages, and interest from any information available, which shall be prima facie correct. The commissioner shall give notice to the taxpayer of such assessments and demand payment of the tax, damages and interest within thirty (30) days from date of delivery of the notice. The notice shall be sent by certified or registered mail or delivered by an agent of the commissioner either to the taxpayer or someone of suitable age and discretion at the taxpayer's residence or place of business.

If the taxpayer shall fail or refuse to comply with the notice of assessment or shall fail to petition for a hearing, the commissioner shall proceed as provided in Section 27-65-39.

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

27-65-9. (1) "Business" shall mean and include all activities or acts engaged in (personal or corporate), for benefit or advantage, either direct or indirect, and not exempting subactivities in connection therewith. Each of such subactivities shall be considered business engaged in, taxable in the class in which it falls.

(2) "Business" shall include activities engaged in by exempt organizations or political entities in competition with privately owned business subject to the provisions of this chapter; however, the term "business" shall not include the following activities:

(a) Sales of prepaid student meal plans by public or private universities, colleges and community or junior colleges; and

(b) Sales of prepared meals by any public or private school to students in Kindergarten through Grade 12.

(3) "Business" shall include the activity or activities of a person in this state performing a service under contract or agreement with another person when the service performed is taxable under the provisions of this chapter.

(4) "Doing business" shall include any person owning personal property located in this state under lease or rental agreement or any person installing personal property within this state.

(5) "Doing business" shall include any person represented in this state by salesmen taking or soliciting orders to be filled from points outside this state for subsequent delivery of the merchandise in equipment owned or leased by the seller to customers located in this state.

SECTION 4. Section 27-65-7, Mississippi Code of 1972, is amended as follows:

27-65-7. "Retailer" shall apply to a person making retail sales through vending machines, by maintaining a store, or operating as a transient vendor, or renting or leasing tangible personal property.

"Retail sales" shall mean and include all sales of tangible personal property except those defined herein as wholesale and those made to a wholesaler, jobber, manufacturer or custom processor for resale or for further processing.

"Retail sale" shall include the value of any tangible personal property manufactured or purchased at wholesale * * * which is withdrawn from the business or stock in trade and is used or consumed within this state in the business or by the owner or by any other person, whether or not in the regular course of business or trade.

"Retail sale" shall also include a sale invoiced to a retailer but delivered to another person who pays for the merchandise upon taking possession.

SECTION 5. Section 27-65-17, Mississippi Code of 1972, is amended as follows:

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

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

(c) Retail sales of farm implements sold to farmers and used directly in the production of poultry, ratite, domesticated fish as defined in Section 69-7-501, livestock, livestock products, agricultural crops or ornamental plant crops or used for other agricultural purposes shall be taxed at the rate of three percent (3%) when used on the farm. The three percent (3%) rate shall also apply to all equipment used in logging, pulpwood operations or tree farming which is either:

(i) Self-propelled, or

(ii) Mounted so that it is permanently attached to other equipment which is self-propelled or permanently attached to other equipment drawn by a vehicle which is self-propelled.

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

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

(f) Sales of machinery and machine parts when made to a technology intensive enterprise for plant use only when the machinery and machine parts will be used exclusively and directly within this state for industrial purposes, including, but not limited to, manufacturing or research and development activities, shall be taxed at the rate of one and one-half percent (1-1/2%). In order to be considered a technology intensive enterprise for purposes of this paragraph:

(i) The enterprise shall meet minimum criteria established by the Mississippi Development Authority;

(ii) The enterprise shall employ at least ten (10) persons in full-time jobs;

(iii) At least ten percent (10%) of the workforce in the facility operated by the enterprise shall be scientists, engineers or computer specialists;

(iv) The enterprise shall manufacture plastics, chemicals, automobiles, aircraft, computers or electronics; or shall be a research and development facility, a computer design or related facility, or a software publishing facility or other technology intensive facility or enterprise as determined by the Mississippi Development Authority;

(v) The average wage of all workers employed by the enterprise at the facility shall be at least one hundred fifty percent (150%) of the state average annual wage; and

(vi) The enterprise must provide a basic health care plan to all employees at the facility.

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

(h) Sales of tangible personal property to electric power associations for use in the ordinary and necessary operation

of their generating or distribution systems shall be taxed at the rate of one percent (1%).

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

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

(k) Sales of equipment used or designed for the purpose of assisting disabled persons, such as wheelchair equipment and lifts, that is mounted or attached to or installed on a private carrier of passengers or light carrier of property, as defined in Section 27-51-101, at the time when the private carrier of passengers or light carrier of property is sold shall be taxed at the same rate as the sale of such vehicles under this section.

(l) Sales of the factory-built components of modular homes, panelized homes and precut homes, and panel constructed homes consisting of structural insulated panels, shall be taxed at the rate of three percent (3%).

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

(3) In lieu of the tax levied in subsection (1) of this section, there is levied on retail sales of truck-tractors and semitrailers used in interstate commerce and registered under the International Registration Plan (IRP) or any similar reciprocity agreement or compact relating to the proportional registration of

commercial vehicles entered into as provided for in Section 27-19-143, a tax at the rate of three percent (3%) of the portion of the sale that is attributable to the usage of such truck-tractor or semitrailer in Mississippi. The portion of the retail sale that is attributable to the usage of such truck-tractor or semitrailer in Mississippi is the retail sales price of the truck-tractor or semitrailer multiplied by the percentage of the total miles traveled by the vehicle that are traveled in Mississippi. The tax levied pursuant to this subsection (3) shall be collected by the State Tax Commission from the purchaser of such truck-tractor or semitrailer at the time of registration of such truck-tractor or semitrailer.

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

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SECTION 6. This act shall take effect and be in force from and after July 1, 2007.