

By: Representatives Guice, Zuber

To: Ways and Means

HOUSE BILL NO. 1564

1 AN ACT TO AMEND SECTION 27-65-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF "GROSS PROCEEDS OF SALES" FOR PURPOSES OF
3 THE STATE SALES TAX LAW TO EXCLUDE REBATES GIVEN TO A PURCHASER
4 AND ASSIGNED TO A DEALER ON THE PURCHASE OF CERTAIN MOTOR VEHICLES
5 WHEN SUCH REBATE IS USED TO REDUCE THE SALES PRICE PAID BY THE
6 PURCHASER; AND FOR RELATED PURPOSES.

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

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

10 27-65-3. The words, terms and phrases, when used in this
11 chapter, shall have the meanings ascribed to them herein.

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

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

16 (c) "Person" means and includes any individual, firm,
17 copartnership, joint venture, association, corporation, promoter
18 of a temporary event, estate, trust or other group or combination
19 acting as a unit, and includes the plural as well as the singular
20 in number. "Person" shall include husband or wife or both where
21 joint benefits are derived from the operation of a business taxed
22 hereunder. "Person" shall also include any state, county,
23 municipal or other agency or association engaging in a business
24 taxable under this chapter.

25 (d) "Tax year" or "taxable year" means either the
26 calendar year or the taxpayer's fiscal year.

27 (e) "Taxpayer" means any person liable for or having
28 paid any tax to the State of Mississippi under the provisions of
29 this chapter.

30 (f) "Sale" or "sales" includes the barter or exchange
31 of property as well as the sale thereof for money or other
32 consideration, and every closed transaction by which the title to
33 taxable property passes shall constitute a taxable event.

34 "Sale" shall also include the passing of title to property
35 for a consideration of coupons, trading stamps or by any other
36 means when redemption is subsequent to the original sale by which
37 the coupon, stamp or other obligation was created.

38 The situs of a sale for the purpose of distributing taxes to
39 municipalities shall be the same as the location of the business
40 from which the sale is made except that:

41 (i) Retail sales along a route from a vehicle or
42 otherwise by a transient vendor shall take the situs of delivery
43 to the customer.

44 (ii) The situs of wholesale sales of tangible
45 personal property taxed at wholesale rates, the amount of which is
46 allowed as a credit against the sales tax liability of the
47 retailer, shall be the same as the location of the business of the
48 retailer receiving the credit.

49 (iii) The situs of wholesale sales of tangible
50 personal property taxed at wholesale rates, the amount of which is
51 not allowed as a credit against the sales tax liability of the
52 retailer, shall have a rural situs.

53 (iv) Income received from the renting or leasing
54 of property used for transportation purposes between cities or
55 counties shall have a rural situs.

56 (g) "Delivery charges" shall mean and include any
57 expenses incurred by a seller in acquiring merchandise for sale in
58 the regular course of business commonly known as "freight-in" or
59 "transportation costs-in." "Delivery charges" also include any
60 charges made by the seller for delivery of property sold to the
61 purchaser.

62 (h) "Gross proceeds of sales" means the value
63 proceeding or accruing from the full sale price of tangible
64 personal property, including installation charges, carrying
65 charges, or any other addition to the selling price on account of
66 deferred payments by the purchaser, without any deduction for
67 delivery charges, cost of property sold, other expenses or losses,
68 or taxes of any kind except those expressly exempt by this
69 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. However, "gross proceeds of sales" does not include
84 meals prepared by a restaurant and provided at no charge to
85 employees of the restaurant or donated to a charitable
86 organization that regularly provides food to the needy and the
87 indigent and which has been granted exemption from the federal
88 income tax as an organization described in Section 501(c)(3) of
89 the Internal Revenue Code of 1986.

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

92 "Gross proceeds of sales" shall not include rebates given to
93 a purchaser and assigned to a dealer on the purchase of a private
94 carrier of passengers or light carrier of property, as defined in

95 Section 27-51-101, when such rebate is used to reduce the sales
96 price paid by the purchaser for the private carrier of passengers
97 or light carrier of property.

98 (i) "Gross income" means the total charges for service
99 or the total receipts (actual or accrued) derived from trades,
100 business or commerce by reason of the investment of capital in the
101 business engaged in, including the sale or rental of tangible
102 personal property, compensation for labor and services performed,
103 and including the receipts from the sales of property retained as
104 toll, without any deduction for rebates, cost of property sold,
105 cost of materials used, labor costs, interest paid, losses or any
106 expense whatever.

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

110 However, "gross income" or "gross proceeds of sales" shall
111 not be construed to include the value of goods returned by
112 customers when the total sale price is refunded either in cash or
113 by credit, or cash discounts allowed and taken on sales. Cash
114 discounts shall not include the value of trading stamps given with
115 a sale of property.

116 (j) "Tangible personal property" means personal
117 property perceptible to the human senses or by chemical analysis
118 as opposed to real property or intangibles and shall include
119 property sold on an installed basis which may become a part of
120 real or personal property.

121 (k) "Installation charges" shall mean and include the
122 charge for the application of tangible personal property to real
123 or personal property without regard to whether or not it becomes a
124 part of the real property or retains its personal property
125 classification. It shall include, but not be limited to, sales in
126 place of roofing, tile, glass, carpets, drapes, fences, awnings,
127 window air conditioning units, gasoline pumps, window guards,

128 floor coverings, carports, store fixtures, aluminum and plastic
129 siding, tombstones and similar personal property.

130 (1) "Newspaper" means a periodical which:

131 (i) Is not published primarily for advertising
132 purposes and has not contained more than seventy-five percent
133 (75%) advertising in more than one-half (1/2) of its issues during
134 any consecutive twelve-month period excluding separate advertising
135 supplements inserted into but separately identifiable from any
136 regular issue or issues;

137 (ii) Has been established and published
138 continuously for at least twelve (12) months;

139 (iii) Is regularly issued at stated intervals no
140 less frequently than once a week, bears a date of issue, and is
141 numbered consecutively; provided, however, that publication on
142 legal holidays of this state or of the United States and on
143 Saturdays and Sundays shall not be required, and failure to
144 publish not more than two (2) regular issues in any calendar year
145 shall not exclude a periodical from this definition;

146 (iv) Is issued from a known office of publication,
147 which shall be the principal public business office of the
148 newspaper and need not be the place at which the periodical is
149 printed and a newspaper shall be deemed to be "published" at the
150 place where its known office of publication is located;

151 (v) Is formed of printed sheets; provided,
152 however, that a periodical that is reproduced by the stencil,
153 mimeograph or hectograph process shall not be considered to be a
154 "newspaper"; and

155 (vi) Is originated and published for the
156 dissemination of current news and intelligence of varied, broad
157 and general public interest, announcements and notices, opinions
158 as editorials on a regular or irregular basis, and advertising and
159 miscellaneous reading matter.

160 The term "newspaper" shall include periodicals which are
161 designed primarily for free circulation or for circulation at
162 nominal rates as well as those which are designed for circulation
163 at more than a nominal rate.

164 The term "newspaper" shall not include a publication or
165 periodical which is published, sponsored by, is directly supported
166 financially by, or is published to further the interests of, or is
167 directed to, or has a circulation restricted in whole or in part
168 to any particular sect, denomination, labor or fraternal
169 organization or other special group or class or citizens.

170 For purposes of this paragraph, a periodical designed
171 primarily for free circulation or circulation at nominal rates
172 shall not be considered to be a newspaper unless such periodical
173 has made an application for such status to the Tax Commission in
174 the manner prescribed by the commission and has provided to the
175 Tax Commission documentation satisfactory to the commission
176 showing that such periodical meets the requirements of the
177 definition of the term "newspaper." However, if such periodical
178 has been determined to be a newspaper under action taken by the
179 State Tax Commission on or before April 11, 1996, such periodical
180 shall be considered to be a newspaper without the necessity of
181 applying for such status. A determination by the State Tax
182 Commission that a publication is a newspaper shall be limited to
183 the application of this chapter and shall not establish that the
184 publication is a newspaper for any other purpose.

185 **SECTION 2.** Nothing in this act shall affect or defeat any
186 claim, assessment, appeal, suit, right or cause of action for
187 taxes due or accrued under the sales tax laws before the date on
188 which this act becomes effective, whether such claims,
189 assessments, appeals, suits or actions have been begun before the
190 date on which this act becomes effective or are begun thereafter;
191 and the provisions of the sales tax laws are expressly continued
192 in full force, effect and operation for the purpose of the

193 assessment, collection and enrollment of liens for any taxes due
194 or accrued and the execution of any warrant under such laws before
195 the date on which this act becomes effective, and for the
196 imposition of any penalties, forfeitures or claims for failure to
197 comply with such laws.

198 **SECTION 3.** This act shall take effect and be in force from
199 and after July 1, 2007.