

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2387

1 AN ACT TO AMEND SECTION 27-65-21, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT PERSONS PERFORMING CONTRACTS FOR THE CONSTRUCTION
3 OF APARTMENT BUILDINGS AND CONDOMINIUMS SHALL BE SUBJECT TO THE
4 CONTRACTORS' TAX; AND FOR RELATED PURPOSES.

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

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

8 27-65-21. (1) (a) (i) Upon every person engaging or
9 continuing in this state in the business of contracting or
10 performing a contract or engaging in any of the activities, or
11 similar activities, listed below for a price, commission, fee or
12 wage, there is hereby levied, assessed and shall be collected a
13 tax equal to three and one-half percent (3-1/2%) of the total
14 contract price or compensation received, including all charges
15 related to the contract such as finance charges and late charges,
16 from constructing, building, erecting, repairing, grading,
17 excavating, drilling, exploring, testing or adding to any
18 building, highway, street, sidewalk, bridge, culvert, sewer,
19 irrigation or water system, drainage or dredging system, levee or
20 levee system or any part thereof, railway, reservoir, dam, power
21 plant, electrical system, air conditioning system, heating system,
22 transmission line, pipeline, tower, dock, storage tank, wharf,
23 excavation, grading, water well, any other improvement or
24 structure or any part thereof when the compensation received
25 exceeds Ten Thousand Dollars (\$10,000.00). Such activities shall
26 not include constructing, repairing or adding to property which
27 retains its identity as personal property. The tax imposed in

28 this section is levied upon the prime contractor and shall be paid
29 by him.

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

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

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

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

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

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

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

62 (2) Upon every person engaging or continuing in this state
63 in the business of contracting or performing a contract of
64 redrilling, or working over, or of drilling an oil well or a gas
65 well, regardless of whether such well is productive or
66 nonproductive, for any valuable consideration, there is hereby
67 levied, assessed and shall be collected a tax equal to three and
68 one-half percent (3-1/2%) of the total contract price or
69 compensation received when such compensation exceeds Ten Thousand
70 Dollars (\$10,000.00).

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

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

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

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

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

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

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

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

When a person engaged in any business on which a tax is levied in Section 27-65-23, also qualifies as a contractor, and contracts with the owner of any project to perform any services in excess of Ten Thousand Dollars (\$10,000.00) herein taxed, such person shall pay the tax imposed by this section in lieu of the tax imposed by Section 27-65-23.

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

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

142 Any person failing either to execute any bond herein
143 provided, or to pay the taxes in advance, before beginning the
144 performance of any contract shall be denied the right to perform
145 such contract until he complies with such requirements, and the
146 commissioner is hereby authorized to proceed either under Section
147 27-65-59, under Section 27-65-61 or by injunction to prevent any
148 activity in the performance of such contract until either a
149 satisfactory bond is executed and filed, or all taxes are paid in
150 advance, and a temporary injunction enjoining the execution of
151 such contract shall be granted without notice by any judge or
152 chancellor now authorized by law to grant injunctions.

153 Any person liable for a tax under this section may apply for
154 and obtain a material purchase certificate from the commissioner
155 which may entitle the holder to purchase materials and services
156 that are to become a component part of the structure to be erected
157 or repaired with no tax due. Provided, that the contractor
158 applying for the contractor's material purchase certificate shall

159 furnish the State Tax Commission a list of all work sublet to
160 others, indicating the amount of work to be performed, and the
161 names and addresses of each subcontractor.

162 **SECTION 2.** This act shall take effect and be in force from
163 and after July 1, 2007.