

MISSISSIPPI LEGISLATURE

2009 Regular Session

To: Finance

By: Senator(s) Lee (35th), Hyde-Smith, King, Browning, Hewes, Jackson (15th), Yancey, Hudson, Dickerson, Jordan, Frazier, Ward, Albritton, Wilemon, Flowers, Horhn, McDaniel, Gordon, Jackson (11th), Davis (1st), Brown, Clarke, Davis (36th), Fillingane, Montgomery, Stone, Watson

Senate Bill 2606

(As Sent to Governor)

AN ACT TO AMEND SECTION 27-65-17, MISSISSIPPI CODE OF 1972, TO INCREASE THE SALES TAX RATE ON RETAIL SALES OF FARM TRACTORS TO FARMERS FOR AGRICULTURAL PURPOSES; TO REDUCE THE SALES TAX RATE ON RETAIL SALES OF FARM IMPLEMENTS SOLD TO FARMERS FOR CERTAIN AGRICULTURAL PURPOSES AND SALES OF EQUIPMENT TO PROFESSIONAL LOGGERS FOR USE IN LOGGING, PULPWOOD OPERATIONS OR TREE FARMING; TO REDUCE THE SALES TAX RATE ON RETAIL SALES OF PARTS USED IN THE REPAIR AND MAINTENANCE OF SUCH IMPLEMENTS AND EQUIPMENT AND LABOR USED FOR SUCH PURPOSES; TO DEFINE THE TERM "PROFESSIONAL LOGGER"; TO REDUCE THE SALES TAX RATE ON SALES OF MATERIALS USED IN THE REPAIR, RENOVATION, EXPANSION AND IMPROVEMENT OF BUILDINGS USED BY DAIRY PRODUCERS FOR THE PRODUCTION OF DAIRY PRODUCTS; TO PROVIDE THAT THE SPECIAL SALES TAX AUTHORIZED IN SENATE BILL NO. 3268, 2009 REGULAR SESSION, SHALL NOT BE LEVIED IN A MUNICIPALITY AFTER A CERTAIN DATE UNLESS AN ELECTION IS HELD IN THE MUNICIPALITY AND AT LEAST 3/5 OF THE QUALIFIED ELECTORS WHO VOTE IN THE ELECTION VOTE IN FAVOR OF CONTINUING THE LEVY OF THE SPECIAL SALES TAX; AND FOR RELATED PURPOSES.

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

SECTION 1. 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 and parts and labor used to maintain and/or repair such tractors shall be taxed at the rate of one

and one-half percent (1-1/2%) when made to farmers for agricultural purposes.

(c) (i) 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, and parts and labor used to maintain and/or repair such implements, shall be taxed at the rate of one and one-half percent (1-1/2%) when used on the farm.

(ii) The one and one-half percent (1-1/2%) rate shall also apply to all equipment used in logging, pulpwood operations or tree farming, and parts and labor used to maintain and/or repair such equipment, which is either:

1. Self-propelled, or

2. 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.

In order to be eligible for the rate of tax provided for in this subparagraph (ii), such sales must be made to a professional logger. For the purposes of this subparagraph (ii), a "professional logger" is a person, corporation, limited liability company or other entity, or an agent thereof, who possesses a professional logger's permit issued by the Mississippi State Tax Commission and who presents the permit to the seller at the time of purchase. The commission shall establish an application process for a professional logger's permit to be issued, which shall include a requirement that the applicant submit a copy of documentation verifying that the applicant is certified according to

Sustainable Forestry Initiative guidelines. Upon a determination that an applicant is a professional logger, the commission shall issue the applicant a numbered professional logger's permit.

(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%).

(m) Sales of materials used in the repair, renovation, addition to, expansion and/or improvement of buildings and related facilities used by a dairy producer shall be taxed at the rate of three and one-half percent (3-1/2%). For the purposes of this paragraph (m), "dairy producer" means any person engaged in the production of milk for commercial use.

(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.

SECTION 2. Nothing in Section 1 of this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which Section 1 of this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

SECTION 3. If the date of repeal contained in Section 1(8) of Senate Bill No. 3268, 2009 Regular Session, is removed or extended beyond

July 1, 2014, a municipality that is levying a special sales tax under such section before July 1, 2014, shall not levy the tax after June 30, 2014, unless an election is conducted, canvassed and the results determined and adjudicated, as far as practical, in the manner provided in Section 1(3) of Senate Bill No. 3268, 2009 Regular Session, and at least three-fifths (3/5) of the qualified electors who vote in the election vote in favor of continuing the levy of the special sales tax.

SECTION 4. The Attorney General of the State of Mississippi shall submit Section 3 of this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

SECTION 5. Section 3 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended. The remainder of this act shall take effect and be in force from and after July 1, 2009.