

3/23 6:17P

Chapter No. 452

11/HR12/R830

EW 1st

HOUSE BILL NO. 598

Originated in House Don Richardson Clerk

HOUSE BILL NO. 598

AN ACT TO AMEND SECTION 27-65-24, MISSISSIPPI CODE OF 1972, TO DELETE THE REPEALER ON THE PROVISION OF LAW WHICH LEVIES A TAX ON THE SALE OF MANUFACTURING OR PROCESSING MACHINERY INSTALLED OR USED AT A REFINERY IN THIS STATE AND ON CONSTRUCTION ACTIVITIES PERFORMED AT OR IN REGARD TO A REFINERY IN THIS STATE, REQUIRES THE OWNER OF A REFINERY HOLDING A DIRECT PAY PERMIT ISSUED BY THE DEPARTMENT OF REVENUE TO FURNISH THE PERMIT TO THE SELLER OR PERSON PERFORMING THE CONSTRUCTION ACTIVITY UNLESS OTHERWISE AUTHORIZED BY THE COMMISSIONER OF REVENUE, AND PROVIDES THAT AFTER BEING FURNISHED THE DIRECT PAY PERMIT, THE SELLER OR PERSON PERFORMING THE CONSTRUCTION ACTIVITY WILL BE RELIEVED OF THE DUTY TO COLLECT THE TAX AND THE OWNER OF THE REFINERY WILL PAY THE TAX; TO AMEND SECTION 27-65-21, MISSISSIPPI CODE OF 1972, TO REMOVE THE REVERTER ON THE PROVISION OF LAW THAT EXEMPTS CONSTRUCTION ACTIVITIES PERFORMED AT CERTAIN REFINERIES FROM THE TAX IMPOSED BY THIS SECTION; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 27-65-24, Mississippi Code of 1972, is amended as follows:

27-65-24. (1) There is levied, assessed and shall be collected a tax on the sale of manufacturing or processing machinery to be installed and/or used at a refinery in this state and on the performance of construction activities at or in regard to a refinery in this state. The tax is in the amount of:

(a) One and one-half percent (1-1/2%) on the gross proceeds of sales for manufacturing or processing machinery without any regard as to whether or not the machinery retains its identity as tangible personal property after installation; and

(b) Three and one-half percent (3-1/2%) of one hundred three and one-half percent (103-1/2%) of the total contract price or compensation paid for the performance of a construction activity.

(2) If the owner of the refinery holds a direct pay permit issued by the Department of Revenue under Section 27-65-93, the owner shall furnish the permit to the seller or person performing the construction activity unless the holder of the direct pay permit is given written instructions or written authority to do otherwise by the commissioner. After being furnished the direct pay permit, the seller or person performing the construction activity shall be relieved of the duty to collect the tax imposed under subsection (1) of this section and the owner of the refinery shall pay the tax in the manner required by rule and regulation promulgated by the commissioner. The commissioner may assign a distinctive number to the refinery and issue the distinctive number to the owner. The owner of the refinery may furnish the distinctive number to persons performing construction activities in order to allow such persons to purchase component materials and parts for use in the construction activity without the requirement of paying sales tax on the purchases.

(3) Any owner of a refinery who makes application for a distinctive number as provided for in subsection (2), shall be required to execute and file with the commissioner 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 this chapter will be paid when due.

(4) As used in this section:

(a) "Refinery" means any facility that manufactures finished petroleum products from crude oil, unfinished oils, natural gas liquids, other hydrocarbons, or alcohol. The term "refinery" does not include terminals, bulk plants or other locations where finished products are blended.

(b) "Construction activity" means the performance of any activity involving and/or incidental to constructing, building, erecting, repairing, grading, excavating, drilling,

exploring, testing or adding to any building, highway, street, sidewalk, bridge, culvert, sewer, irrigation or water system, drainage or dredging system, levee or levee system or any part thereof, railway, reservoir, dam, power plant, electrical system, air-conditioning system, heating system, transmission line, pipeline, tower, dock, storage tank, wharf, excavation, grading, water well, and other improvement or structure or any part thereof.

(c) "Total contract price or compensation received" means all compensation received for the performance of construction activities, including monies received for all charges related to the contract or construction activities, including, but not limited to, finance charges and late charges; however, where the total contract price of a project exceeds the sum of One Hundred Million Dollars (\$100,000,000.00) that portion of the compensation received in regard to the project that is attributable to design or engineering shall not be considered part of the total contract price or compensation received for construction activities from the project.

* * *

SECTION 2. Section 27-65-21, Mississippi Code of 1972, is amended as follows:

27-65-21. (1) (a) (i) Upon every person engaging or continuing in this state in the business of contracting or performing a contract or engaging in any of the activities, or similar activities, listed below for a price, commission, fee or wage, there is hereby levied, assessed and shall be collected a tax equal to three and one-half percent (3-1/2%) of the total contract price or compensation received, including all charges related to the contract such as finance charges and late charges, from constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing or adding to any building, highway, street, sidewalk, bridge, culvert, sewer,

irrigation or water system, drainage or dredging system, levee or levee system or any part thereof, railway, reservoir, dam, power plant, electrical system, air-conditioning system, heating system, transmission line, pipeline, tower, dock, storage tank, wharf, excavation, grading, water well, any other improvement or structure or any part thereof when the compensation received exceeds Ten Thousand Dollars (\$10,000.00). Such activities shall not include constructing, repairing or adding to property which retains its identity as personal property. The tax imposed in this section is levied upon the prime contractor and shall be paid by him.

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

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

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

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

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

(iv) The contract price or compensation received for constructing, building, erecting, repairing or adding to any building, facility or structure located at any refinery as defined in Section 27-65-24.

(c) Sales of materials and services for use in the activities hereby excluded from taxes imposed by this section, except services used in activities excluded pursuant to paragraph (b)(iii) of this subsection, shall be subject to taxes imposed by other sections in this chapter.

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

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

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

"Bottom-hole contribution" -- Money or property given to an operator for his use in the drilling of a well on property in

which the payor has no interest. The contribution is payable whether the well is productive or nonproductive.

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

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

"Total contract price or compensation received" -- As related to oil and gas well contractors, shall include amounts received as 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 commissioner 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 this chapter, or under Section 27-67-5 and Section 27-7-5, will be paid when due. Such bonds shall be either (a) "job bonds" which guarantee payment when due of the aforesaid taxes resulting from performance of a specified job or activity regardless of date of completion; or (b) "blanket bonds" which guarantee payment when due of the aforesaid taxes resulting from performance of all jobs or activities taxable under this section begun during the period specified therein, regardless of date of completion. The payments of the taxes due or the execution and filing of a surety bond shall be a condition precedent to the commencing work on any contract taxed hereunder. Provided, that when any bond is filed in lieu of the prepayment of the tax under this section, that the tax shall be payable monthly on the amount received during the previous month, and any use taxes due shall be payable on or before the twentieth day of the month following the month in which the property is brought into Mississippi.

Any person failing either to execute any bond herein provided, or to pay the taxes in advance, before beginning the

performance of any contract shall be denied the right to perform such contract until he complies with such requirements, and the commissioner is hereby authorized to proceed either under Section 27-65-59, under Section 27-65-61 or by injunction to prevent any activity in the performance of such contract until either a satisfactory bond is executed and filed, or all taxes are paid in advance, and a temporary injunction enjoining the execution of such contract shall be granted without notice by any judge or chancellor now authorized by law to grant injunctions.

Any person liable for a tax under this section may apply for and obtain a material purchase certificate from the commissioner which may entitle the holder to purchase materials and services that are to become a component part of the structure to be erected or repaired with no tax due. Provided, that the contractor applying for the contractor's material purchase certificate shall furnish the Department of Revenue a list of all work sublet to others, indicating the amount of work to be performed, and the names and addresses of each subcontractor.

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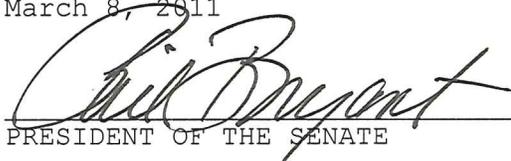
SECTION 3. This act shall take effect and be in force from and after July 1, 2011.

PASSED BY THE HOUSE OF REPRESENTATIVES
January 26, 2011

PASSED BY THE SENATE
March 8, 2011

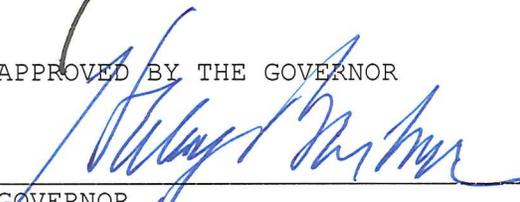


SPEAKER OF THE HOUSE OF REPRESENTATIVES



PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR



GOVERNOR
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