MISSISSIPPI LEGISLATURE REGULAR SESSION 2014

By: Senator(s) Longwitz, McDaniel, Sojourner, Watson

To: Finance

SENATE BILL NO. 2921
(As Sent to Governor)

AN ACT TO CREATE THE JESSICA SIBLEY UPSHAW FOOD BANK AND FOOD PANTRY SALES TAX RELIEF ACT; TO AMEND SECTION 27-65-111, MISSISSIPPI CODE OF 1972, AS AMENDED BY SENATE BILL NO. 2425, 2014 REGULAR SESSION, TO EXEMPT FROM SALES TAXATION THE SALE OF NONPERISHABLE FOOD ITEMS TO CERTAIN CHARITABLE ORGANIZATIONS THAT OPERATE A FOOD BANK OR FOOD PANTRY OR FOOD LINES; TO EXEMPT FROM SALES TAXATION SALES OF TANGIBLE PERSONAL PROPERTY OR SERVICES TO NATIONAL ASSOCIATION OF JUNIOR AUXILIARIES, INC.; TO EXEMPT FROM SALES TAXATION THE SALE OF TANGIBLE PERSONAL PROPERTY AND SERVICES TO THE UNITED WAY OF THE PINE BELT REGION, INC.; TO EXEMPT FROM SALES TAXATION SALES OF TANGIBLE PERSONAL PROPERTY AND SERVICES TO THE MISSISSIPPI CHILDREN'S MUSEUM; TO EXEMPT FROM SALES TAXATION SALES OF TANGIBLE PERSONAL PROPERTY OR SERVICES TO THE JACKSON ZOOLOGICAL PARK; TO EXEMPT FROM SALES TAXATION SALES TO TANGIBLE PERSONAL PROPERTY OR SERVICES TO THE HATTIESBURG ZOO; TO EXEMPT FROM SALES TAXATION GROSS PROCEEDS FROM SALES OF FOOD, MERCHANDISE OR OTHER CONCESSIONS AT AN EVENT HELD SOLELY FOR RELIGIOUS OR CHARITABLE PURPOSES AT LIVESTOCK FACILITIES, AGRICULTURE FACILITIES OR OTHER FACILITIES CONSTRUCTED, RENOVATED OR EXPANDED WITH FUNDS FOR THE GRANT PROGRAM AUTHORIZED UNDER SECTION 18, CHAPTER 530, LAWS OF 1995; AND FOR RELATED PURPOSES.

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

SECTION 1. This act shall be known and may be cited as the "Jessica Sibley Upshaw Food Bank and Food Pantry Sales Tax Relief Act."

SECTION 2. Section 27-65-111, Mississippi Code of 1972, as amended by Senate Bill No. 2425, 2014 Regular Session, is amended as follows:

27-65-111. The exemptions from the provisions of this chapter which are not industrial, agricultural or governmental, or which do not relate to utilities or taxes, or which are not properly classified as one (1) of the exemption classifications of this chapter, shall be confined to persons or property exempted by this section or by the Constitution of the United States or the State of Mississippi. No exemptions as now provided by any other section, except the classified exemption sections of this chapter set forth herein, shall be valid as against the tax herein levied. Any subsequent exemption from the tax levied hereunder, except as indicated above, shall be provided by amendments to this section.

No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972.

The tax levied by this chapter shall not apply to the following:

(a) Sales of tangible personal property and services to hospitals or infirmaries owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual, and which are subject to and governed by Sections 41-7-123 through 41-7-127.

Only sales of tangible personal property or services which are ordinary and necessary to the operation of such hospitals and infirmaries are exempted from tax.

(b) Sales of daily or weekly newspapers, and periodicals or publications of scientific, literary or educational organizations exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1954, as it exists as of March 31, 1975, and subscription sales of all magazines.

(c) Sales of coffins, caskets and other materials used in the preparation of human bodies for burial.

(d) Sales of tangible personal property for immediate export to a foreign country.

(e) Sales of tangible personal property to an orphanage, old men's or ladies' home, supported wholly or in part by a religious denomination, fraternal nonprofit organization or other nonprofit organization.

(f) Sales of tangible personal property, labor or services taxable under Sections 27-65-17, 27-65-19 and 27-65-23, to a YMCA, YWCA, a Boys' or Girls' Club owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual.

(g) Sales to elementary and secondary grade schools, junior and senior colleges owned and operated by a corporation or association in which no part of the net earnings inures to the

benefit of any private shareholder, group or individual, and which are exempt from state income taxation, provided that this exemption does not apply to sales of property or services which are not to be used in the ordinary operation of the school, or which are to be resold to the students or the public.

(h) The gross proceeds of retail sales and the use or consumption in this state of drugs and medicines:

(i) Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed or prescription filled by a registered pharmacist in accordance with law; or

(ii) Furnished by a licensed physician, surgeon, dentist or podiatrist to his own patient for treatment of the patient; or

(iii) Furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, surgeon, dentist or podiatrist; or

(iv) Sold to a licensed physician, surgeon, podiatrist, dentist or hospital for the treatment of a human being; or

(v) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being or furnished for the treatment of a human being by a medical facility or clinic maintained by this

state or any political subdivision or municipal corporation thereof.

"Medicines," as used in this paragraph (h), shall mean and include any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for such use; provided that "medicines" do not include any auditory, prosthetic, ophthalmic or ocular device or appliance, any dentures or parts thereof or any artificial limbs or their replacement parts, articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices or other mechanical, electronic, optical or physical equipment or article or the component parts and accessories thereof, or any alcoholic beverage or any other drug or medicine not commonly referred to as a prescription drug.

Notwithstanding the preceding sentence of this paragraph (h), "medicines" as used in this paragraph (h), shall mean and include sutures, whether or not permanently implanted, bone screws, bone pins, pacemakers and other articles permanently implanted in the human body to assist the functioning of any natural organ, artery, vein or limb and which remain or dissolve in the body.

"Hospital," as used in this paragraph (h), shall have the meaning ascribed to it in Section 41-9-3, Mississippi Code of 1972.

Insulin furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on prescription within the meaning of this paragraph (h).

(i) Retail sales of automobiles, trucks and truck-tractors if exported from this state within forty-eight (48) hours and registered and first used in another state.

(j) Sales of tangible personal property or services to the Salvation Army and the Muscular Dystrophy Association, Inc.

(k) From July 1, 1985, through December 31, 1992, retail sales of "alcohol blended fuel" as such term is defined in Section 75-55-5. The gasoline-alcohol blend or the straight alcohol eligible for this exemption shall not contain alcohol distilled outside the State of Mississippi.

(l) Sales of tangible personal property or services to the Institute for Technology Development.

(m) The gross proceeds of retail sales of food and drink for human consumption made through vending machines serviced by full line vendors from and not connected with other taxable businesses.

(n) The gross proceeds of sales of motor fuel.

(o) Retail sales of food for human consumption purchased with food stamps issued by the United States Department of Agriculture, or other federal agency, from and after October 1, 1987, or from and after the expiration of any waiver granted

pursuant to federal law, the effect of which waiver is to permit the collection by the state of tax on such retail sales of food for human consumption purchased with food stamps.

(p) Sales of cookies for human consumption by the Girl Scouts of America no part of the net earnings from which sales inures to the benefit of any private group or individual.

(q) Gifts or sales of tangible personal property or services to public or private nonprofit museums of art.

(r) Sales of tangible personal property or services to alumni associations of state-supported colleges or universities.

(s) Sales of tangible personal property or services to National Association of Junior Auxiliaries, Inc., and chapters of the National Association of Junior Auxiliaries, Inc.

(t) Sales of tangible personal property or services to domestic violence shelters which qualify for state funding under Sections 93-21-101 through 93-21-113.

(u) Sales of tangible personal property or services to the National Multiple Sclerosis Society, Mississippi Chapter.

(v) Retail sales of food for human consumption purchased with food instruments issued the Mississippi Band of Choctaw Indians under the Women, Infants and Children Program (WIC) funded by the United States Department of Agriculture.

(w) Sales of tangible personal property or services to a private company, as defined in Section 57-61-5, which is making

such purchases with proceeds of bonds issued under Section 57-61-1 et seq., the Mississippi Business Investment Act.

(x) The gross collections from the operation of self-service, coin-operated car washing equipment and sales of the service of washing motor vehicles with portable high-pressure washing equipment on the premises of the customer.

(y) Sales of tangible personal property or services to the Mississippi Technology Alliance.

(z) Sales of tangible personal property to nonprofit organizations that provide foster care, adoption services and temporary housing for unwed mothers and their children if the organization is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(aa) Sales of tangible personal property to nonprofit organizations that provide residential rehabilitation for persons with alcohol and drug dependencies if the organization is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(bb) Retail sales of an article of clothing or footwear designed to be worn on or about the human body if the sales price of the article is less than One Hundred Dollars ($100.00) and the sale takes place during a period beginning at 12:01 a.m. on the last Friday in July and ending at 12:00 midnight the following Saturday. This paragraph (bb) shall not apply to:

(i) Accessories including jewelry, handbags, luggage, umbrellas, wallets, watches, backpacks, briefcases, garment bags and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

(ii) The rental of clothing or footwear; and

(iii) Skis, swim fins, roller blades, skates and similar items worn on the foot.

From and after January 1, 2010, the governing authorities of a municipality, for retail sales occurring within the corporate limits of the municipality, may suspend the application of the exemption provided for in this paragraph (bb) by adoption of a resolution to that effect stating the date upon which the suspension shall take effect. A certified copy of the resolution shall be furnished to the Department of Revenue at least ninety (90) days prior to the date upon which the municipality desires such suspension to take effect.

(cc) The gross proceeds of sales of tangible personal property made for the sole purpose of raising funds for a school or an organization affiliated with a school.

As used in this paragraph (cc), "school" means any public or private school that teaches courses of instruction to students in any grade from Kindergarten through Grade 12.

(dd) Sales of durable medical equipment and home medical supplies when ordered or prescribed by a licensed

physician for medical purposes of a patient, and when payment for the equipment or supplies is made, in part or in whole, on behalf of or for the benefit of an insured as a covered benefit under an insurance policy, contract or plan. As used in this paragraph (dd), "durable medical equipment" means equipment, including repair and replacement parts for the equipment, which:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury; and

(iv) Is not worn in or on the body.

(ee) Sales of tangible personal property or services to Mississippi Blood Services.

(ff) (i) Subject to the provisions of this paragraph (ff), retail sales of firearms, ammunition and hunting supplies if sold during the annual Mississippi Second Amendment Weekend holiday beginning at 12:01 a.m. on the first Friday in September and ending at 12:00 midnight the following Sunday. For the purposes of this paragraph (ff), "hunting supplies" means tangible personal property used for hunting, including, and limited to, archery equipment, firearm and archery cases, firearm and archery accessories, hearing protection, holsters, belts and slings. Hunting supplies does not include animals used for hunting.

(ii) This paragraph (ff) shall apply only if one or more of the following occur:

1. Title to and/or possession of an eligible item is transferred from a seller to a purchaser; and/or

2. A purchaser orders and pays for an eligible item and the seller accepts the order for immediate shipment, even if delivery is made after the time period provided in subparagraph (i) of this paragraph (ff), provided that the purchaser has not requested or caused the delay in shipment.

(jj) Sales of nonperishable food items to charitable organizations that are exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code and operate a food bank or food pantry or food lines.

(kk) Sales of tangible personal property or services to The United Way of the Pine Belt Region, Inc.

(ll) Sales of tangible personal property or services to the Mississippi Children's Museum.

(mm) Sales of tangible personal property or services to the Jackson Zoological Park.

(nn) Sales of tangible personal property or services to the Hattiesburg Zoo.

(oo) Gross proceeds from sales of food, merchandise or other concessions at an event held solely for religious or charitable purposes at livestock facilities, agriculture facilities or other facilities constructed, renovated or expanded

with funds for the grant program authorized under Section 18, Chapter 530, Laws of 1995.

SECTION 3. This act shall take effect and be in force from and after July 1, 2014.

ST: Sales taxation; exempt sales to the Mississippi Children's Museum.