

MUNICIPAL PRIVILEGE TAXES

CITY CLERKS' CERTIFICATION - October/November 2004

HATTIESBURG - TUPELO - JACKSON

Presented By: Ronald Robinson, CPA Office of the State Auditor

<u>TYPE TAX OR LICENSE</u>	<u>PAGE</u>
I. LOCAL PRIVILEGE LICENSE	3
II. TRANSIENT VENDOR	9
III. SLOT AMUSEMENT MACHINES	12
IV. VENDING MACHINES	14
V. BEER TAX	16
VI. TOBACCO SALES TAX	17
VII. TITLE PLEDGE LICENSE	18
VIII. PAWNBROKER LICENSE	19
IX. CHECK CASHING LICENSE	20
X. TAX REFUNDS	21

I. LOCAL PRIVILEGE LICENSE

PURPOSE: A mandatory tax for the privilege of doing business within the municipality. Sec. 27-17-5 (2)

APPLIES TO: All business for profit (unless exempt). Sec. 27-17-3

TYPES OF LICENSE

1. GENERAL BUSINESSES: Sec. 27-17-9

A. Each location of all businesses not specifically covered by another section of law

B. Based on number of employees.

- (1) \$ 20 Three or fewer employees.
- (2) \$ 30 Four to ten employees
- (3) \$ 30 plus \$3 for each employee over ten with \$ 150 limit for a non manufacturing business
- (4) \$ 80 for a manufacturing business with more than 10 employees.

2. AUTOMOBILES FOR HIRE OR RENT Sec. 27-17-35 (also see Sec. 21-27-131)

A. All taxi cabs, U-drive-it, etc.

B. Based on class of municipality

- (1) \$ 15 each operated Class 1 25000 + population
- (2) \$ 10 each operated Class 2 15000 + population
- (3) \$ 5 each operated Class 3 or less 15000 - population

3. COIN OPERATED LAUNDRIES Sec. 27-17-230

A. Pays “General Business” license only for each location (see 1 above)

B. Does not pay vending machine tax under Sec. 27-27-301

4. PAWN BROKERS Sec. 27-17-299

- A. Business defined as pawnbroker under Sec. 75-67-303 and holds a license under Sec. 75-67-321
- B. Each pawnbroker location pays \$ 250
- C. Additional charge of \$ 250 if location receives dirk, knife, sword-cane, brass or metal knucks or pistol in pawn
- D. Deadly weapons license also due if deadly weapons are sold (Sec. 27-17-415)

5. STORES Sec. 27-17-365

- A. A business selling goods and wares ad valorem tax assessed as inventory
- B. Operated from a permanent building (owned or leased for 90 + days)
- C. Open during reasonable hours
- D. Amount for license ranges (see attached listing) from \$ 20 to \$1840 depending on assessed valuation. Motor vehicle dealer inventory excluded Sec. 27-51-41 (2)(a).

6. TRAVEL AGENCIES Sec. 27-17-392 **REPEALED JULY 1, 1998**

7. DEADLY WEAPONS DEALERS Sec. 27-17-415

- A. Selling pistols, dirk knives, sword canes, brass or metallic knuckles, or other deadly weapons (excepting hunting knives, shot guns and rifles)
- B. Each person \$ 100
- C. This is in addition to other privilege license (pawn brokers, etc.)

8. DRILLING RIGS Sec. 27-17- 423

- A. Each drilling rig for each well.
- B. License cost is based on depth of well, regardless of production.
 - (1) Up to 7000 feet 1.01 cents per foot
 - (2) Above 7000 feet 4.21 cents per foot
- C. Maximum license required in one year
 - (1) For wells up to 7000 feet eight (8)
 - (2) For well above 7000 feet four (4)

ADMINISTRATION

1. **WHERE OBTAINED:** From the municipal tax collector (city clerk)
Sec. 27-27-451

2. **HOW OBTAINED:** Sec. 27-17-453
 - A. On application form provided by tax collector
 - B. In writing and sworn to by authorized person (owner or corporate agent)
 - C. Application content: Name, address, location, nature of business, number of employees (previous 12 Months), any other information the tax collector may require. All information necessary to classify and collect the tax; and reasonable information for other purposes (such as for the zoning approval).
 - D. Money required to pay the tax must accompany the application

3. **ISSUANCE AND DURATION:** Sec. 27-17-455
 - A. Upon determination of proper application and payment, license **must be** issued for one year. There is no requirement that other conditions (such as proper zoning) be satisfied to issue a local privilege license. The license should not be withheld pending satisfaction of other requirements (such zoning qualifications).
 - B. A duplicate of the license must be attached to the application and kept on file as a public record for three years. Sec. 27-17-453
 - C. SEE "UNLAWFUL BUSINESSES" BELOW

1. EXPIRATION DATE OF LICENSE

- A. Effective from the first day of the month of issuance. Sec. 27-17- 455
- A. Expiration date is September 30 or one year from issuance
if an ordinance so provides Sec. 27-17-463
- B. The charge for a partial year license is prorated.

5. NOTICE OF EXPIRATION OF LICENSE Sec. 27-17- 465

- A. Tax Collector must send renewal notice, with application form, to businesses by the first day of the month prior to the month of expiration.
- B. Failure to send notice does not exempt penalties.

6. PRIOR YEAR COLLECTIONS Sec. 27-17-468

Businesses found to not have purchased license for prior years must be charged, but with a limit of 7 prior years.

7. LICENSE MUST BE POSTED Sec. 27-17-469

- A. Permanent location businesses - post in a conspicuous place
- B. Other businesses - kept in possession of vendor
- C. Slot or vending machines - attach to the machine
- D. Tax collector may endorse location moves

8. LICENSE IS PERSONAL PRIVILEGE Sec. 27-17-471

License is not transferable to another business, change in partners is not a transfer.

9. UNLAWFUL BUSINESSES

- A. Privilege license does not make an illegal business lawful Sec. 27-17-473
- B. License must have statement printed “this license shall not make lawful any act or thing declared to be unlawful by the state of Mississippi” Sec. 27-17-475
- C. SEE ISSUANCE AND DURATION ABOVE

10. REQUISITION FOR LICENSES Sec. 27-17-477

Board approvals for license blanks must note serial numbers of blanks purchased

11. PRIVILEGE TAX REGISTER Sec. 27-17-493

- A. A privilege tax register must be kept
- B. The register must contain names of purchasers, amounts paid, serial numbers, period covered, and type and location of business.
- C. The register and all unused application blanks must be submitted to the board for examination within 20 days of the end of the fiscal year.
- D. After examined by the board and if found correct, the register is endorsed as “examined and found correct”.
- E. The examined register must be filed as a permanent record
- F. Unused blank application must be kept for three years

12. PENALTIES Sec. 27-17-467 and Sec. 27-17-499

- A. Tax collector must demand payment of any delinquent taxes
- B. A delinquent penalty of 10 % plus 1 % per month must be added to late payments. This penalty is calculated at 10 % the first month and 1 % for each month after the first month (see Attorney General’s Opinion number 2001-0589, Sept. 27, 2001).
- C. Tax payer may be charged criminally as a misdemeanor Sec. 27-17-521

13. COLLECTION MONTHLY REPORTS Sec. 27-17-501

A report to the board of licenses issued must be made each month

14. COLLECTION ENFORCEMENT

- A. May file suit in court. Sec. 27-17-467 & 27-17-499 & 27-17-521
- B. May collect on suit by seizing property for sale Sec. 27-17-521

15. PENALTY ON TAX COLLECTOR Sec. 27-17-499

- A. Officer liable for tax plus penalties for negligently failing to collect
- B. Officer liable for \$ 100 penalty for each failure to collect.

EXEMPTIONS

1. Only applies to “for profit businesses” Sec. 27-17-3, therefore, non-profits are exempt
2. Anyone holding an exemption certificate Sec. 27-17-489
 - A. 65 + year old, 50 % disabled, or specified maimed and annual income of \$ 900 or less is exempt for businesses listed Sec. 27-17-479 (sign painter, repair shops, etc.)
 - B. All municipalities Sec. 27-17-483
 - C. Clubs selling products they make in the promotion or development of domestic arts (cooking, sewing, painting, etc.) Sec. 27-17-485
 - D. Person pursuing trade (not supplying materials) Sec. 27-17-485
 - E. State, county, community fairs or public benefit fairs Sec. 27-17-487
 - F. Exemption Certificate: Sec. 27-17-489
 - (1) An exemption certificate for any Sec. 27-17-479 through 27-17-485 must be issued prior to operation of the business
 - (2) Sec. 17-17-479 50 % disability related applications for exemption an certificate must have statement from health department or U.S. veterans bureau
 - (3) Exemption certificate must be reissued each year, with proof of \$ 900 or less earnings for prior year
3. Any privilege tax paid under Chapter 15 of Title 27 Sec. 27-15-7
 - A. Insurance Companies Sec. 27-15-81
 - B. Telephone, railroad, telegraph, sleeping car, express, electric light and power companies, and pipe line companies. Sec. 27-15-173
4. Liquor stores paying taxes under Sec. 27-71-5 (2)
(A.G. Opinion to Gene F. McGee July 31,1991)
5. Loan Companies holding a Sec. 27-21-3 state privilege license. Sec. 27-21-9

REFUNDS

Tax Collector (city clerk) may refund per Sec. 27-73-7. No board order is required for this type of refund.

II.

TRANSIENT VENDOR

PURPOSE: A mandatory tax on transient vendors doing business within the municipality.
Sec. 75-85-5

APPLIES TO: Persons transacting business for a period of less than six months

APPLICATION:

1. Application must be on a form prescribed by the State Tax Commission. Sec. 75-85-9
2. Application must contain the following information. Sec. 75-85-7
 - A. The name and address of the applicant
 - B. Nature of business, (kind, location & length of operating time)
 - C. Name and address of applicant's agent
 - D. Proof that all other required license have been obtained, including sales tax number with municipality's diversion code.
 - E. Association or corporate information, (officers, state, etc.)
3. Tax collector must maintain an alphabetical list of all transient vendors.
4. Application must designate an agent.
 - A. Agent must be resident of municipality
 - B. Agent must agree in writing to serve as agent
 - C. Agent must accept process, notice and demands on licensee provided by law
 - D. If the transient vendor has no agent, the tax collector must serve as agent and forward copies of process, notice and demands by registered/certified mail to permanent address of the transient vendor.

LICENSE:

- C. License must be on form prescribed by the State Tax Commission Sec. 75-85-9
- D. License is good for 90 days Sec. 75-85-15
- E. A renewal license is good for an additional 90 days Sec. 75-85-15

FEE:

1. The fee is up to \$ 250 (as set by the board)
for deposit into the General Fund Sec. 75-85-13
2. The renewal fee is \$ 25 for deposit into the General Fund Sec. 75-85-15

BOND: Sec. 75-85-13

1. A cash or surety bond must be posted in favor of the state
2. Bond must be for the lessor of \$ 2000 or 5 % of wholesale value of property to be sold
3. Bond must cover taxes, fines and judgements due from cause brought within one year
4. Bond shall be released upon proof that all claims and taxes are satisfied

POSTING OF VENDOR INFORMATION: Sec. 75-85-17

1. Transient vendor must post certain information in a prominent place in bold legible letters and numbers not less than one inch in height
2. Information Required:
 - A. Sales tax number
 - B. Transient vendor license number, and
 - C. Statement that receipts are required (including sales tax)

EXCEPTIONS TO TRANSIENT VENDOR REQUIREMENT:

Sec. 75-85-3

(1) The provisions of this chapter shall not apply to:

(a) Civic and nonprofit organizations or wholesale sales to retail merchants by commercial travelers;

(b) Wholesale trade shows or conventions;

(c) Sales of goods, wares, services or merchandise by sample, catalogue or brochure for future delivery;

(d) Fairs and convention center activities conducted primarily for amusement or entertainment;

(e) Any general sale, fair, circus, auction or bazaar sponsored by a church or religious organization;

(f) Garage sales held on premises devoted to residential use;

(g) Sales or repairs of crafts or sales or repairs of items made by hand by the person making the crafts or items;

(h) Duly licensed flea markets operating from a fixed location;

(i) Sales of agricultural, dairy, poultry, seafood or forest management products or services related to forest management or silvicultural activities, nursery products, foliage plants or ornamental trees, except such products or services sold at retail and not grown or produced within Mississippi;

(j) Sales of agricultural services.

(2) A transient vendor not otherwise exempted from this chapter is not exempted from this chapter because of a temporary association with a local dealer, auctioneer, trader, contractor or merchant, or by conducting the transient business in connection with or in the name of any local dealer, auctioneer, trader, contractor or merchant.

PENALTY: Sec. 75-85-19

1. Intentional operation without license subjects transient vendor up to \$ 500 fine and/or six months in jail.
2. Subject to suit and tax collector may seize and sell property as with ad valorem tax sales.

LOCAL ORDINANCE: Sec. 21-19-35

- A. Ordinances not inconsistent with Sec. 75-85-1 through 75-85-19 may be adopted
- B. Municipal ordinance takes precedent over county ordinance
- C. Transient vendor must post a \$ 2000 bond to secure compliance with ordinance
- D. Ordinance violation penalty is up to \$ 1000 and/or 90 days in jail. Sec. 21-13-1

III. SLOT AMUSEMENT MACHINES

PURPOSE: An optional tax that a municipality may impose upon slot amusement machines.
Sec. 27-27-5

APPLIES TO: Coin operated machines that play games, music, etc. Sec. 27-27-3
Is in addition to other taxes levied by law Sec. 27-27-13

LICENSE/STICKERS: Sec. 27-27-7

1. Application must be filed in such form as required by the municipality
2. License is due in January and good for one year
3. Stickers are issued to be attached to each machine
4. Sticker is valid for machine in any location or by any owner

TAX TO BE COLLECTED:

- A. Tax must be levied by municipal board Sec. 27-27-5 (2)
- B. Amount of tax is:
 - (1) Picture or sound producing machines \$ 27 each
 - (2) Unspecified game machines \$ 45 each
 - (3) Ride machines (hobby horse, etc.) \$ 18 each
- C. Tax is payable into the General Fund Sec. 27-27-21
- D. May pay by cash, check, money order or bank exchange Sec. 27-27-21

EXEMPTIONS: Sec. 27-27-11

1. Legal gambling machines
2. Bingo or pull-tab machines on the premises of charitable bingo licenses
3. Machines not operated by distributors or manufacturers
4. Pool halls where pool table collections are subject to sales tax
5. Antique coin machines Sec. 27-27-12

ADMINISTRATION: Sec. 27-27-19

1. Taxable persons must keep records for three years to show location, purpose, type of machine and coin size to operate each machine subject to tax Sec. 27-27-17
2. Tax collector may promulgate regulations not inconsistent with this law.
3. Complete public records must be kept for three years.

PENALTIES:

1. 50 % penalty for not paying tax or affixing license/sticker to machine. Sec. 27-27-9
2. Officer may take possession of machine until tax paid or court order. Sec. 27-27-15
3. For operation or disturbance after seizure person may be fined \$ 500 and/or sentenced to six months jail. Sec. 27-27-15

IV

VENDING MACHINES

PURPOSE: A mandatory tax on vending machines operated (or permitted to be operated) within the municipality. Sec. 27-27-301

APPLIES TO: Coin operated machines dispensing merchandise (weighing, automatic vending, selling cigarettes, etc.) Sec. 27-27-301

AMOUNT OF TAX: Sec. 27-27-301

There is hereby levied and imposed in lieu of all licenses and privilege taxes heretofore levied, except the taxes levied by the Mississippi Sales Tax Law, a tax upon each person, firm, association or corporation owning or operating any automatic weighing machine, any automatic vending machine or device for dispensing or selling postage stamps, any automatic vending machine or device for dispensing or selling cigarettes, and automatic machines selling and vending merchandise for the sale of which any tax has been paid by the owner, which service, stamps, or merchandise is obtained by depositing therein any token, coin, or coins, a tax according to the following schedules:

(a) Upon each person operating, owning or permitting to be operated in his place of business any automatic or slot weighing machine, or any automatic slot vending machine, or other devices dispensing or selling postage stamps, for each such machine \$2.00

(b) Upon each person operating, owning, or permitting to be operated in his place of business any automatic vending machine wherein is kept within the machine cigarettes on which the specific privilege tax of selling such articles of merchandise at retail has been paid by the owner of the machine, or the owner of the place of business where such machine is operated, to be obtained by depositing therein any token, coin, or coins, for each such machine ... \$2.50

(c) Upon each person operating, owning, or permitting to be operated in his place of business any automatic vending machine where any service is rendered and not elsewhere taxed or where is kept within the machine any article of merchandise to be obtained by depositing therein any token, coin, or coins, as follows:

For each machine requiring the deposit of a token, coin, or coins, of less than five cents (5 cents) \$2.50

For each machine requiring the deposit of a token, coin, or coins, of five cents (5 cents) and less than ten cents (10 cents) \$5.00

For each machine requiring the deposit of a token, coin, or coins of ten cents (10 cents) and not more than twenty cents (20 cents) \$7.50

For each machine requiring the deposit of a token, coin, or coins, of more than twenty cents (20 cents) \$10.00

Provided, however, that such machines requiring deposits of ten cents (10¢) or less and vending food products only shall be exempt from the provisions of this article, and no such privilege tax shall be required to be paid when such machines are sponsored by local nonprofit civic service clubs or any other organization either incorporated or unincorporated and existing and operating under the laws of the state of Mississippi when such clubs or organizations expend the proceeds from such machines for charitable purposes only.

ADMINISTRATION: Sec. 27-27-303

Vending machine tax collection is administered under the same rules as for “Local Privilege Taxes” See Sections 27-17-451 through 27-17-501

EXEMPTIONS: Sec. 27-27-305

5. Machines owned and operated in a **store** (Sec. 27-17-365) by a store owner who has paid the local privilege tax.
6. Machines operated for employees only at no profit.
7. Legal gambling machines

V.

BEER TAX

PURPOSE: An optional tax on businesses licensed to sale beer. Sec. 27-71-345

APPLIES: All businesses licensed under Sec. 67-3-27.
Wholesaler, manufacturer, or distributor only where located Sec. 27-71-345

AMOUNT OF TAX:

- 8. Up to 50 % of the state tax imposed under Sec. 27-71-303
- 9. Retailers - Amount due is up to one half of \$ 30 or up to \$ 15
- 10. Wholesalers/distributors - Amount due is up to one half of \$ 100 or up to \$ 50
- 11. Manufacturers - Amount due is up to one half of \$ 1000 or up to \$ 500

ADMINISTRATION:

- A. Reasonable rules adopted by the municipality
- B. Ordinance for zoning, hourly, etc. regulations as will promote public health, morals, and safety. Sec. 67-3-65

PENALTIES: Sec. 27-71-347

Conviction of violation of this law results in up to \$ 500 fine and/or sentence of up to six months in jail.

VI. CIGARETTE DEALER'S LICENSE

PURPOSE: An optional tax on businesses licensed to sale cigarettes. Sec. 27-69-69

APPLIES: All businesses licensed under Sec. 27-69-69, except wholesalers and distributors may only be taxed by the municipality where the business is located.

AMOUNT OF TAX:

Up to 50 % of the state tax imposed under Sec. 27-69-69
(50 % X \$ 100.00 = \$ 50.00 per year)

ADMINISTRATION:

1. Reasonable rules adopted by the municipality
2. Commissioner and State Auditor's rules. Sec. 27-69-73
3. Sales Tax Law Penalties and Administration. Sec. 27-69-41

PENALTIES:

Conviction of violation of this law results in \$ 50 to \$ 500 fine. Sec. 27-69-7

VII.

TITLE PLEDGE LICENSE

PURPOSE: To meet conditions required for a title pledge lender to qualify for and apply through the Commissioner of Banking and Consumer Finance for a state license. Sec. 75-67-421.

APPLIES TO: All title pledge lenders seeking a state license under Sec. 75-67-419.

MUNICIPAL RESPONSIBILITIES:

The **municipality has no responsibility** for the application and background check responsibilities. These responsibilities were deleted from the law effective May 23, 2000.

LOCAL PRIVILEGE TAX: Sec. 27-17-5

There is no exception from paying the local privilege tax in the title pledge lender law; therefore the local privilege tax is due in addition to the state title pledge lender license.

COMPLIANCE REQUIREMENTS

ORDINANCES: Sec. 75-67-439

Municipalities may adopt reasonable ordinances consistent with Sec. 75-67-401 through 75-67-441. Inconsistent ordinances are null and void.

PENALTIES: Sec. 75-67-431

1. For intentional violation by licensee or employee of any provision of this law or false required record entry, the fine is \$ 1000 per violation or entry.
2. For failure to record title pledge transaction and subsequent disposal of property.
 - A. First offense a fine up to \$ 1000 and/or one year in jail
 - B. Second offense a fine up to \$ 5000 and/or one to five years in jail
3. Surety bond is forfeited for to the special budget of the law enforcement agency which directly participated in the prosecution of an item (2) above conviction.

VIII.

PAWNBROKER LICENSE

PURPOSE: To meet conditions required for a pawnbroker to qualify for and apply through the Commissioner of Banking and Consumer Finance for a state license.
Sec. 75-67-323

APPLIES TO: All pawnbrokers seeking a state license under Sec. 75-67-321.

MUNICIPAL RESPONSIBILITIES:

The **municipality has no responsibility** for the application and background check responsibilities. These were deleted from the law effective March 24, 2001.

LOCAL PRIVILEGE TAX: Sec. 27-17-5

There is no exception from paying the local privilege tax in the title pledge lender law; therefore, the local privilege tax is due in addition to the state title pledge lender license.

COMPLIANCE REQUIREMENTS:

ORDINANCES: Sec. 75-67-343

Municipalities may adopt reasonable ordinances consistent with Sec. 75-67-301 through 75-67-343. Inconsistent ordinances are null and void.

PENALTIES: Sec. 75-67-333

1. For operating a pawnshop without a licensee the fine is \$ 1000 and/or up to one year in jail. Sec. 75-67-331.
2. For intentional violation by licensee or employee of any provision of this law or false required record entry, the fine is \$ 1000 per violation or entry.
3. For failure to record title pledge transaction and subsequent disposal of property.
 - A. First offense a fine up to \$ 1000 and/or one year in jail
 - B. Second offense a fine up to \$ 5000 and/or one to five years in jail
4. Surety bond is forfeited for to the special budget of the law enforcement agency which directly participated in the prosecution of an item (3) above conviction.

IX. CHECK CASHERS LICENSE

PURPOSE: To meet conditions required for a check cashier to qualify for and apply through the Commissioner of Banking and Consumer Finance for a state license.
Sec. 75-67-509

APPLIES TO: All check cashiers seeking a state license under Sec. 75-67-505.

MUNICIPAL RESPONSIBILITIES:

The **municipality has no responsibility** for the application and background check responsibilities. These were deleted from the law effective March 24, 2001.

LOCAL PRIVILEGE TAX: Sec. 27-17-5

There is no exception from paying the local privilege tax in the check cashiers law; therefore, the local privilege tax is due in addition to the state check cashiers license.

COMPLIANCE REQUIREMENTS

ORDINANCES: Sec. 75-67-535

Municipalities may adopt reasonable ordinances consistent with Sec. 75-67-501 through 75-67-539. Inconsistent ordinances are null and void.

PENALTIES: Sec. 75-67-527 & Sec. 75-67-525

1. For intentional violation by licensee or employee of any provision of this law or false required record entry, the misdemeanor fine is \$ 1000 per violation or entry.
2. Commissioner may impose a civil penalty up to \$ 500 per violation of any requirement in Sec. 75-67-501 through 75-67-539.
3. Surety bond is forfeited for to the special budget of the law enforcement agency which directly participated in the prosecution of an item (3) above conviction.

X.

TAX REFUNDS

Office of the Attorney General State of Mississippi*1 Opinion No. 96-0689 October 4, 1996

Re: Tax refunds

Hon. Thomas U. Reynolds Attorney for Tallahatchie County Board of Supervisors
P.O. Drawer 350 Charleston, Mississippi 38921

Dear Mr. Reynolds:

Attorney General Mike Moore has received your request for an official opinion and has assigned it to me for research and reply. Your letter reads as follows:

Please advise me whether county and local governments are limited to refunding incorrectly assessed local taxes to only a three year period prior to demand by the taxpayer for refund of incorrectly assessed taxes.

Section 27-73-7 of the Mississippi Code Annotated states:

The **tax collector is authorized and empowered to refund** any individual, firm or corporation any **ad valorem, privilege or excise tax which has been paid or collected through error or otherwise** when such person, individual, firm or corporation has paid any such tax in excess of the sum properly due whether paid under protest or not. Taxes erroneously paid within the meaning of this section shall include, but not be limited to, double payment, or overpayment, or payment on state, United States, vacant and exempt land, and the purchase paid for the redemption of lands erroneously sold for taxes.

All refunds under this provision shall be made out of monies collected by the tax collector from the same source of revenue, or if such source of revenue no longer exists the refund shall come from the general fund collections. The tax collector shall issue a warrant to the claimant and deduct the proper amounts from his next settlement.

Where a taxpayer has paid through error or otherwise a sum in excess of that which was properly due, the tax collector is authorized, on order of the board of supervisors, to refund such erroneous tax payment. MS AG Op., Greco (March 4, 1992), attached. The taxpayer must apply or petition for such a refund. Section 27-73-3, Miss. Code Ann. Since there is no specific statute that prescribes the time within which a claim for a refund of erroneously paid taxes must be made, the three (3) year period of limitation provided for in Section 15-1-49, Miss. Code Ann. applies. Therefore, a refund of erroneously paid taxes may be made for taxes that were paid within three (3) years prior to the date the petition seeking such refunds was filed with the board of supervisors. MS AG Op., Robinson (December 12, 1990), attached.

If this office can be of any further assistance, please let us know.

Very truly yours, By: Sandra M. Shelton Special Assistant Attorney General

Rhonda Rester, Deputy City Clerk Grenada - (City) Privilege Tax - 12/13/05

Section 27-17-3 defines "business" to include all activities engaged in for profit. If a business's activities include sales of goods, wares and merchandise (Sec. 27-17-365) and services not "otherwise specified" (Sec. 27-17-9) it is still one business. A single business may not be charged as two businesses (see following Attorney General's Opinion to Robert W. Lawrence, dated 2/23/89).

The city must determine if the business activities are all operating as one business (same tax numbers, etc.). This can be done by including appropriate business tax, activity and operating condition questions on the application (Sec. 27-17-453).

If the declared business activities and conditions meet the definition of a "store" [Sec. 27-17-365 (3) & (5)] and include inventory that will be assessed for ad valorem tax purposes [Sec. 27-17-365 (2)], the business may be classified as a "store".

If the "business" activities and conditions satisfy the requirements of both a "store" (Sec. 27-17-365) and a business not "otherwise specified" (Sec. 27-17-9), a decision must be made as to which activity is most material (or would produce the highest tax). The business should be classified based upon its most material activity.

I hope this information is helpful.

Ronald Robinson - State Auditor's Office - (800) 321-1275

Rhonda Rester wrote:

Hey Ronald, you can forward this to someone else if you want. I know you were moving to another position, but I have a question and didn't know where else to send this. We have a business that has a hair salon and a gift shop together. They say they have only one banking account. When they applied for the license, they thought they were going to be in separate locations but one of the locations rented to someone else so they put them together. Should they pay for separate licenses or just one? The salon would be based on employees and the gift shop would be based on inventory. We are thinking they have to pay for separate licenses because the businesses are not related. Please send your opinion on this matter.

Thanks,
Rhonda Rester
Deputy City Clerk
Grenada, MS

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Tired of spam? Yahoo! Mail has the best spam protection around
<http://mail.yahoo.com>

Office of the Attorney General
State of Mississippi

*1 February 23, 1989

Robert W. Lawrence, Esq.
City Attorney of Crystal Springs, Mississippi
Post Office Box 191
290 E. Railroad Avenue
Crystal Springs, Mississippi 39059

Sir:

Attorney General Mike Moore has received your request for an official opinion of this office dated December 29, 1988, and he has assigned it to the undersigned for research and reply. In your letter, a copy of which is attached, you state that in your opinion there is an apparent ambiguity between [Miss.Code Ann. § 27-17-9](#), as amended, and [Miss.Code Ann. § 27-17-365](#), as amended. Your question is as follows:

Is a "store" as defined in [§ 27-17-365](#) required to pay the privilege tax imposed under [§ 27-17-9](#) levied against "every person desiring to engage in any business ..." and the tax levied under [§ 27-17-365](#) upon "each person operating a wholesale and retail store for sale of goods, wares and merchandise...." or, are the two statutes to be read as mutually exclusive resulting in one tax.

We understand the question to be whether a person who operates a wholesale or retail store must pay the tax imposed by [Miss.Code Ann. § 27-17-9\(1\)](#), as amended, in addition to the tax imposed by [Miss.Code Ann. § 27-17-365\(2\)](#), as amended.

[Section 27-17-9\(1\)](#) is as follows:

Every person desiring to engage in any business, or exercise any privilege hereinafter specified ... shall apply for, pay for and procure ... a privilege license authorizing him to engage in the business or exercise the privileges specified therein....

The term "business" for purposes of the statute is said to include all activities or acts, personal, professional or corporate, engaged in or caused to be engaged in with the object of gain, profit, benefit or advantage, either direct or indirect, or following or engaging in any trade, calling or profession, and all things which occupy the time, attention and labor of individuals for the purpose of livelihood or profit. [Miss.Code Ann. § 27-17-3](#), as amended.

[Miss.Code Ann. § 27-17-365\(2\)](#), as amended, states:

Beginning October 1, 1985, and thereafter, there shall be levied a tax upon each person operating a wholesale or retail store for the sale of goods, wares and merchandise....

A "store" is said to be a place of business operated by a person dealing in goods, wares and merchandise and located in a permanent building.... [§ 27-17-365\(3\)](#). A "place of business" means a store, shop, counting room, office, factory or other location or locations ... where any

business is done, conducted or carried on. [Miss.Code Ann. § 27-17-3](#), as amended.

It is obvious that, for purposes of the local privilege tax statute, operation of a store is an operation of a business, given the definitions just set out. A store is simply a more narrow form of a "business". § 27-19-9 applies without limitation or exception to all persons desiring to engage in business.

Where a statute or series of statutes regarding the same subject matter are capable of two or more interpretations, the construction which is most beneficial and which will avoid objectionable consequences will be adopted. [McCaffrey's Food Market, Inc. v. Mississippi Milk Commission, 227 So.2d 459, 465 \(Miss.1969\)](#). A construction of a statute or statutes which leads to unwise or unjust results will not be adopted. [Aikerson v. State, 274 So.2d 124 \(Miss.1973\)](#). Revenue statutes are considered favorably to the citizens and taxpayers, and a construction will not be placed on a statute which will impose double taxation unless the language of the statute to that effect is plain. [Middleton v. Lincoln County, 122 Miss. 673, 84 So. 907, 909 \(1920\)](#); cf [Board of Levee Commissioners for Yazoo, Mississippi Delta v. Howze Mercantile Co., 149 Miss. 843, 116 So. 92 \(1928\)](#).

*2 We can divine no just purpose or reason from the statute to justify imposition of two taxes on storeowners. Nor does it plainly appear that the legislature intended such a result. A construction of the statutes which would require a double tax would, in our view, be an unjust one. Accordingly, it is this office's opinion that persons desiring to operate a wholesale or retail store for the sale of goods, wares and merchandise are obligated to apply for, pay for and procure a privilege tax under [Miss.Code Ann. § 27-17-9\(1\)](#), the amount of the tax to be paid being calculated under [Miss.Code Ann. § 27-17-365\(2\)](#). The storeowners are not obligated to pay in addition to the tax imposed by [§ 27-17-365](#) the tax imposed on other businesses or manufacturers as set out in and calculated by [§ 27-17-9\(2\)\(a\)-\(d\)](#).

We trust this opinion will be of assistance to you.

Sincerely,

Mike Moore
Attorney General