

Exhibit U

Laws 1988, Chapter 491 (S.B. 2546)

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. Section 5-1-41, Mississippi Code of 1972, is amended as follows:

5-1-41. Beginning with the 1986 Regular Session of the Legislature of the State of Mississippi, each Senator and Representative of the Legislature shall receive as compensation at each regular session the sum of Ten Thousand Dollars (\$10,000.00) and the mileage allowance provided by Section 25-3-41, for each mile of the distance by the most direct route usually traveled in coming to and returning from the place where the Legislature sits; and shall receive for attending each extraordinary session or called session the sum of Fifty Dollars (\$50.00) per day and mileage at the same rate as per regular session. In addition to the above, each Senator and Representative shall receive the sum of Eight Hundred Dollars (\$800.00) per month for expenses incidental to his office for every full month of his term, except any month or major fraction thereof when the Legislature is convened in regular or extraordinary session; and payments shall be made to each Senator and Representative by the State Treasurer between the first and tenth day of each month following the month for which said payments are due.

SECTION 2. This act shall take effect and be in force from and after July 1, 1988.

Approved: May 2, 1988

**CHAPTER NO. 491
SENATE BILL NUMBER 2546**

AN ACT TO AMEND SECTION 27-65-23, MISSISSIPPI CODE OF 1972, TO CLARIFY THE MEANING OF TV CABLE SYSTEMS; TO AMEND SECTIONS 27-65-55, MISSISSIPPI CODE OF 1972, TO CLARIFY THE SALES TAX LIABILITY OF OFFICERS AND DIRECTORS OF CORPORATIONS; TO AMEND SECTION 27-67-3, MISSISSIPPI CODE OF 1972, TO DEFINE COMPUTER SOFTWARE AS TANGIBLE PERSONAL PROPERTY WITH RESPECT TO IMPOSITION OF THE USE TAX AND TO CONFORM TO SENATE BILL 3035, 1988 REGULAR SESSION; TO AMEND SECTIONS 27-67-19 AND 27-67-23, MISSISSIPPI CODE OF 1972, TO CLARIFY IMPOSITION OF A 1% MONTHLY INTEREST PENALTY ON DELINQUENT USE TAX PAYMENTS; AND FOR RELATED PURPOSES.

WHEREAS, there has arisen confusion concerning the meaning of the term "TV cable systems" as used in Section 27-65-23, Mississippi Code of 1972; and

WHEREAS, the Legislature wishes to make clear the meaning of such term as it is used in Section 27-65-23, Mississippi Code of 1972; NOW, THEREFORE,

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. Section 27-65-23, Mississippi Code of 1972, is amended as follows:

27-65-23. Upon every person engaging or continuing in any of the following businesses or activities there is hereby levied, assessed and shall be collected a tax equal to six percent (6%) of the gross income of the business, except as otherwise provided:

- Air conditioning installation or repairs;
- Automobile, aircraft, motorcycle, boat or any other vehicle repairing or servicing;
- Billiards, pool, or domino parlors;
- Bowling or tenpin alleys;
- Burglar and fire alarm systems or services;
- Car washing— automatic, self-service, or manual;
- Computer software sales and services;
- Cotton compresses or cotton warehouses;
- Custom croosoting or treating, custom planing, custom sawing;
- Custom meat processing;

Electricians, electrical work, wiring, all repairs or installation of electrical equipment;
Elevator or escalator installing, repairing or servicing;
Film developing or photo finishing;
Foundries, machine or general repairing;
Furniture repairing or upholstering;
Grading, excavating, ditching, dredging or landscaping;
Hotels, motels, tourist courts or camps, trailer parks;
Insulating services or repairs;
Jewelry or watch repairing;
Laundering, cleaning, pressing or dyeing;
Marina services;
Mattress renovating;
Office and business machine repairing;
Parking garages and lots;
Plumbing or pipe fitting;
Public storage warehouses;
Refrigerating equipment repairs;
Radio or television installing, repairing, or servicing;
Renting or leasing personal property used within this state;
Services performed in connection with geophysical surveying, exploring, developing, drilling, producing, distributing, or testing of oil, gas, water and other mineral resources;
Shoe repairing;
Storage lockers;
Telephone answering or paging services;
Termite or pest control services;
Tin and sheet metal shops;
TV cable systems, subscription TV services, and other similar activities;
Vulcanizing, repairing or recapping of tires or tubes;
Welding; and
Woodworking or wood turning shops.

There is hereby levied, assessed and shall be collected a tax of Fifteen Cents (15¢) per bale of cotton ginned for the privilege of operating any cotton gin, regardless of gin ownership or ownership of cotton ginned or any charge made or not made for the service.

Income from services taxed herein performed for electric power associations in the ordinary and necessary operation of their generating or distribution systems shall be taxed at the rate of one percent (1%).

Income from services taxed herein performed on materials for use in track or 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%).

Income from renting or leasing tangible personal property used within this state shall be taxed at the same rates as sales of the same property.

Persons doing business in this state who rent transportation equipment with a situs within or without the state to common, contract or private commercial carriers are taxed on that part of the income derived from use within this state. If specific accounting is impracticable, a formula may be used with approval of the commissioner.

A lessor may deduct from the tax computed on the rental income from tangible personal property a credit for sales or use tax paid to this state at the time of purchase of the specific personal property being leased or rented until such credit has been exhausted.

Charges for custom processing and repairing services may be excluded from gross taxable income when the property on which the service was performed is delivered to the customer in another state either by common carrier or in the seller's equipment.

When a taxpayer performs unitary services covered by this section, which are performed both in intrastate and interstate commerce, the commissioner is hereby invested with authority to formulate in each particular case and to fix for such taxpayer in each instance formulae of apportionment which will apportion to this state, for taxation, that portion of the services which are performed within the State of Mississippi.

SECTION 2. Section 27-65-55, Mississippi Code of 1972, is amended as follows:

27-65-55. The tax imposed by this chapter shall be a lien upon the property of any person subject to the provisions thereof who shall sell out his business or stock of goods, or shall quit business, and such person shall be required to make out the return provided for under Section 27-65-33 within ten (10) days after the date he sold out his business or stock of goods, or quit business, and pay the tax imposed by this chapter. The purchaser or transferee in business shall be required to withhold sufficient of the purchase money to cover the amount of any taxes, damages and interest due until such time as the former owner shall produce a receipt from the commissioner showing that such liability has been paid, or a certificate that no taxes are due. In the event the former owner shall fail to pay any taxes, damages and interest due the state within the time allowed, the successor in business shall pay such taxes, damages and interest to the commissioner upon demand. If the purchaser or transferee of a business or stock of goods shall fail to withhold purchase money as provided and the taxes, damages and interest shall be due and unpaid after the period of ten (10) days allowed, he shall be personally liable for the payment of taxes, damages and interest of the former owner, and the property sold or transferred may be proceeded against by the commissioner in the hands of the purchaser or transferee as though no sale or transfer had been made.

Officers and directors owning stock of ten percent (10%) or more of the total of corporations with thirty-five (35) or fewer shareholders shall be jointly and severally liable for sales taxes levied by this chapter upon such corporations when such taxes become due and unpaid to the extent that such taxes accrued while such person was exercising responsibility for fiscal management as an officer or director. The commissioner shall make assessments against said officers and directors of such taxes, damages and interest, and effect collection by the same procedures herein provided for assessment and collection of all taxes levied by this chapter. Any person, acting as agent for a dealer who has no permanent place of business in this state, who sells tangible personal property in this state, either at auction or as a transient vendor, shall be liable for collection of sales tax, where applicable, and payment of the same of this state unless the vendor principal is authorized to collect the tax and is registered under Section 27-65-27. Such persons shall maintain for a period of three (3) years adequate records which shall be available for inspection by the commissioner or his agent and which shall reveal the true sales tax liability of all parties to each transaction. Failure to maintain and permit examination of such records shall render the agent liable for sales tax accruing from all sales as determined by the commissioner from any information available. The commissioner shall effect collection by the same procedures herein provided for assessment and collection of all taxes levied by this chapter.

SECTION 3. Section 27-67-3, Mississippi Code of 1972, is amended as follows:

27-67-3. Whenever used in this article, the words, phrases and terms shall have the meaning ascribed to them as follows:

(a) "Tax Commission" means the State Tax Commission of the State of Mississippi.

(b) "Commissioner" means the Chairman of the State Tax Commission.

(c) "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate or any other group or combination acting as a unit and includes the plural as well as the singular in number. "Person" shall also include husband or wife, or both, where joint benefits are derived from the operation of a business taxed hereunder or where joint benefits are derived from the use of property taxed hereunder.

(d) "Taxpayer" means any person liable for the payment of any tax hereunder, or liable for the collection and payment of the tax.

(e) "Sale" or "purchase" means the exchange of properties for money or other consideration, and the barter of properties. Every closed transaction by which title to, or possession of, tangible personal property passes shall constitute a taxable event. A transaction whereby the possession of property is transferred but the seller retains title as security for payment of the selling price shall be deemed a sale.

(f) "Purchase price" or "sales price" means the total amount for which tangible personal property is purchased or sold, valued in money, including any additional charges for deferred payment, installation and service charges, and freight charges to the point of use within this state, without any deduction for cost of property sold, expenses or losses, or taxes of any kind except those exempt by the sales tax law. "Purchase price" or "sales price" shall not include cash discounts allowed and taken or merchandise returned by customers when the total sales price is refunded either in cash or by credit, and shall not include amounts allowed for a trade-in of similar property.

(g) "Lease" or "rent" means any agreement entered into for a consideration that transfers possession or control of tangible personal property to a person for use within this state.

(h) "Value" means the estimated or assessed monetary worth of a thing or property. The value of property transferred into this state for sales promotion or advertising shall be an amount not less than the cost paid by the transferor or donor. The value of property which has been used in another state may be determined by its fair market value at the time imported into this state or other method acceptable to the commissioner. On property imported by the manufacturer thereof for rental or lease within this state, value shall be the manufactured cost of the property and freight to the place of use in Mississippi.

(i) "Tangible personal property" means personal property perceptible to the human senses or by chemical analysis, as opposed to real property or intangibles. "Tangible personal property" shall include printed, mimeographed, multigraphed matter, or material reproduced in any other manner, and books, catalogs, manuals, publications or similar documents covering the services of collecting, compiling or analyzing information of any kind or nature. However, reports representing the work of persons such as lawyers, accountants, engineers and similar professionals shall not be included. "Tangible personal property" shall also include tangible advertising or sales promotion materials such as, but not limited to, displays, brochures, signs, catalogs, price lists, point of sale advertising materials and technical manuals. "Tangible personal property" shall also include computer software programs.

(j) "Person doing business in this state," "person maintaining a place of business within this state," or any similar term means any person having within this state an office, a distribution house, a sales room or house, a warehouse, or any other place of business, or owning personal property located in this state used by another person, or installing personal property in this state. This definition also includes any person selling or taking orders for any tangible personal property, either personally, by mail or through an employee representative, salesman, commission agent, canvasser, solicitor or independent contractor or by any other means from within the state.

Any person doing business under the terms of the article by reason of coming under any one or more of the qualifying provisions listed above shall be considered as doing business on all transactions involving sales to persons within this state.

(k) "Use" or "consumption" means the first use or intended use within this state of tangible personal property and shall include rental or loan by owners or use by lessees or other persons receiving benefits from use of the property. "Use" or "consumption" shall include the benefit realized or to be realized by persons importing or causing to be imported into this state tangible advertising or sales promotion materials.

(l) "Storage" means keeping tangible personal property in this state for subsequent use or consumption in this state.

SECTION 4. Section 27-67-19, Mississippi Code of 1972, is amended as follows:

27-67-19. The commissioner may grant a reasonable extension of time for making any return and paying the tax due thereon, but the time for filing any such return shall not be extended beyond the twentieth of the month next succeeding the regular due date of such return without the imposition of interest at the rate of one percent (1%) per month, or fractional part of a month, from the regular due date of such return until the tax is paid.

For persistent, willful or recurring failure to make any return and pay the tax shown thereby to be due, by the time specified herein, there shall be added to the amount of tax shown to be due, ten percent (10%) damages, or interest at the rate of one percent (1%) per month, or both.

SECTION 5. Section 27-67-23, Mississippi Code of 1972, is amended as follows:

27-67-23. If any taxpayer feels aggrieved by an assessment for taxes made upon him for any year by the commissioner, he may apply to the board of review, such board to be composed of qualified employees of the commission appointed by the chairman, said application to be made by petition in writing, within ten (10) days after notice is mailed to him, for a hearing and a correction of the amount of the tax assessed upon him by the commissioner. At said hearing, the board of review shall try the issues presented according to the law and the facts, and within guidelines set by the commissioner, and shall notify the taxpayer of its determination. If the board of review orders the payment of the tax, the taxpayer shall pay the tax, damages and interest, if any, within ten (10) days after the order is issued, provided there is no application for appeal to the State Tax Commission.

If any taxpayer feels aggrieved by the decision of the board of review, he may apply to the State Tax Commission by petition, in writing, within ten (10) days after notice is mailed to him, for a hearing and a correction of the amount of the tax assessed upon him by the commissioner. In such petition he shall set forth the reasons such hearing should be granted and the amount in which such tax should be reduced. The State Tax Commission shall promptly consider the petition, grant the hearing, and notify the petitioner of the time and place fixed for the hearing. After the hearing, the State Tax Commission may make such order in the matter as may appear to it just and lawful and shall furnish a copy of the order to the petitioner. If the State Tax Commission orders the payment of the tax, the taxpayer shall pay the tax, damages and interest, if any, within ten (10) days after the order is issued. Interest shall accrue on the delinquent tax at the rate of one percent (1%) per month or part of a month from and after the expiration of the period of ten (10) days if not paid by that time.

SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the Mississippi Sales and Use Tax Laws prior to July 1, 1988, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1988, or shall thereafter be begun; and the provisions of the aforesaid statutes and amendments thereto 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 executing of any warrant thereunder prior to July 1, 1988, or the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

SECTION 7. This act shall take effect and be in force from and after July 1, 1988.

Approved: May 2, 1988