HOUSE BILL NO. 267

AN ACT TO AMEND SECTION 27-65-19, MISSISSIPPI CODE OF 1972, TO REQUIRE THE IMPOSITION OF A TAX ON PAY-PER-CALL SERVICES THROUGH 900 OR SIMILAR TELEPHONE NUMBERS UNDER THE STATE SALES TAX LAWS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 27-65-19, Mississippi Code of 1972, is amended as follows:

27-65-19. (1) (a) Except as otherwise provided in this subsection, upon every person selling to consumers, electricity, current, power, potable water, steam, coal, natural gas, liquefied petroleum gas or other fuel, there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross income of the business. Provided, gross income from sales to consumers of electricity, current, power, natural gas, liquefied petroleum gas or other fuel for residential heating, lighting or other residential noncommercial or nonagricultural use, and sales of potable water for residential, noncommercial or nonagricultural use shall be excluded from taxable gross income of the business. Provided further, upon every such seller using electricity, current, power, potable water, steam, coal, natural gas, liquefied petroleum gas or other fuel for nonindustrial purposes, there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the cost or value of the product or service used.

(b) There is hereby levied, assessed and shall be collected a tax equal to one and one-half percent (1-1/2%) of the gross income of the business when the electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel is
sold to or used by a manufacturer, custom processor or public
service company for industrial purposes, which shall include that
used to generate electricity, to operate an electrical
distribution or transmission system, to operate pipeline
compressor or pumping stations or to operate railroad locomotives;
provided, however, that:

(i) From and after July 1, 2000, through June 30,
2001, sales of fuel used to produce electric power by a company
primarily engaged in the business of producing, generating or
distributing electric power for sale shall be taxed at the rate of
one and one-eighth percent (1.125%);

(ii) From and after July 1, 2001, through June 30,
2002, sales of fuel used to produce electric power by a company
primarily engaged in the business of producing, generating or
distributing electric power for sale shall be taxed at the rate of
three-fourths of one percent (0.75%);

(iii) From and after July 1, 2002, through June
30, 2003, sales of fuel used to produce electric power by a
company primarily engaged in the business of producing, generating
or distributing electric power for sale shall be taxed at the rate
of three-eighths of one percent (0.375%);

(iv) From and after July 1, 2003, sales of fuel
used to produce electric power by a company primarily engaged in
the business of producing, generating or distributing electric
power for sale shall be exempt from sales tax as provided in
Section 27-65-107.

(c) The one and one-half percent (1-1/2%) industrial
rate provided for in this subsection shall also apply when the
electricity, current, power, steam, coal, natural gas, liquefied
petroleum gas or other fuel is sold to a producer or processor for
use directly in the production of poultry or poultry products, the
production of livestock and livestock products, the production of
plants or food by commercial horticulturists, the processing of
milk and milk products, the processing of poultry and livestock feed, and the irrigation of farm crops.

(d) The one and one-half percent (1-1/2%) rate provided for in this subsection shall not apply to sales of fuel for automobiles, trucks, truck-tractors, buses, farm tractors or airplanes.

(e) Upon every person operating a telegraph or telephone business or pay-per-call service for the transmission of messages or conversations between points within this state, there is hereby levied, assessed and shall be collected, a tax equal to seven percent (7%) of the gross income of such business, with no deduction or allowance for any part of an intrastate rate charge because of routing across a state line. Charges by one telecommunications provider to another telecommunications provider for services that are resold by such other telecommunications provider, including, but not limited to, access charges, shall not be subject to the tax levied pursuant to this paragraph (e).

However, any sale of a prepaid telephone calling card or prepaid authorization number, or both, shall be deemed to be the sale of tangible personal property subject only to such taxes imposed by law on the sale of tangible personal property. If the sale of a prepaid telephone calling card or prepaid authorization number does not take place at the vendor's place of business, it shall be conclusively determined to take place at the customer's shipping address. The reauthorization of a prepaid telephone calling card or a prepaid authorization number shall be conclusively determined to take place at the customer's billing address. For purposes of this paragraph (e), the term "pay-per-call service" means any service that is accessed through the use of a 900 telephone number or other prefix or area code designated by the Federal Communications Commission for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to,
the charge for transmission of the call and which, during the
call, a person provides or purports to provide the following:

(i) Audio information or audio entertainment produced
or packaged by the person;

(ii) Access to simultaneous voice conversation
services; or

(iii) Any other service, including the provision of a
product, for which charges are assessed on the basis of the
completion of the call.

The term "pay-per-call services" does not include directory
assistance services provided by a telephone company.

(f) Upon every person operating a telegraph or
telecommunications business or pay-per-call service for the
transmission of messages or conversations originating in this
state or terminating in this state via interstate
telecommunications, which are charged to the customer's service
address in this state, regardless of where such amount is billed
or paid, there is hereby levied, assessed and shall be collected a
tax equal to five and one-half percent (5.5%) of the gross income
received by such business from such interstate telecommunications.
However, a person, upon proof that he has paid a tax in another
state on such event, shall be allowed a credit against the tax
imposed in this paragraph (f) on interstate telecommunications
charges to the extent that the amount of such tax is properly due
and actually paid in such other state and to the extent that the
rate of sales tax imposed by and paid to such other state does not
exceed the rate of sales tax imposed by this paragraph (f).

Charges by one telecommunications provider to another
telecommunications provider for services that are resold by such
other telecommunications provider, including, but not limited to,
access charges, shall not be subject to the tax levied pursuant to
this paragraph (f). For purposes of this paragraph (f), the term
"pay-per-call service" means any service that is accessed through
the use of a 900 telephone number or other prefix or area code
designated by the Federal Communications Commission for which the
caller pays a per-call or per-time-interval charge that is greater
than, or in addition to, the charge for transmission of the call
and which, during the call, a person provides or purports to
provide the following:

(i) Audio information or audio entertainment produced
or packaged by the person;

(ii) Access to simultaneous voice conversation
services; or

(iii) Any other service, including the provision of a
product, for which charges are assessed on the basis of the
completion of the call.

The term "pay-per-call services" does not include directory
assistance services provided by a telephone company.

(2) Persons making sales to consumers of electricity,
current, power, natural gas, liquefied petroleum gas or other fuel
for residential heating, lighting or other residential
noncommercial or nonagricultural use or sales of potable water for
residential, noncommercial or nonagricultural use shall indicate
on each statement rendered to customers that such charges are
exempt from sales taxes.

(3) There is hereby levied, assessed and shall be paid on
transportation charges on shipments moving between points within
this state when paid directly by the consumer, a tax equal to the
rate applicable to the sale of the property being transported.
Such tax shall be reported and paid directly to the State Tax
Commission by the consumer.

SECTION 2. 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 sales tax laws before the date on
which 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. This act shall take effect and be in force from
and after July 1, 2001.