

By: Representative Watson

To: Ways and Means

HOUSE BILL NO. 1456

1 AN ACT TO AMEND SECTION 27-65-19, MISSISSIPPI CODE OF 1972,
 2 TO AUTHORIZE TELECOMMUNICATIONS PROVIDERS TO SELL TAXABLE AND
 3 NONTAXABLE PROPERTIES AND SERVICES AT A SINGLE NONITEMIZED PRICE
 4 CALLED A BUNDLED TRANSACTION; TO PROVIDE THAT NONTAXABLE
 5 PROPERTIES AND SERVICES IN A BUNDLED TRANSACTION SHALL BE SUBJECT
 6 TO TAX UNLESS THE PROVIDER CAN REASONABLY IDENTIFY THE NONTAXABLE
 7 PORTION FROM ITS BOOKS AND RECORDS KEPT IN THE REGULAR COURSE OF
 8 BUSINESS; AND FOR RELATED PURPOSES.

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

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

12 27-65-19. (1) (a) Except as otherwise provided in this
 13 subsection, upon every person selling to consumers, electricity,
 14 current, power, potable water, steam, coal, natural gas, liquefied
 15 petroleum gas or other fuel, there is hereby levied, assessed and
 16 shall be collected a tax equal to seven percent (7%) of the gross
 17 income of the business. Provided, gross income from sales to
 18 consumers of electricity, current, power, natural gas, liquefied
 19 petroleum gas or other fuel for residential heating, lighting or
 20 other residential noncommercial or nonagricultural use, and sales
 21 of potable water for residential, noncommercial or nonagricultural
 22 use shall be excluded from taxable gross income of the business.
 23 Provided further, upon every such seller using electricity,
 24 current, power, potable water, steam, coal, natural gas, liquefied
 25 petroleum gas or other fuel for nonindustrial purposes, there is
 26 hereby levied, assessed and shall be collected a tax equal to
 27 seven percent (7%) of the cost or value of the product or service
 28 used.

29 (b) There is hereby levied, assessed and shall be
 30 collected a tax equal to one and one-half percent (1-1/2%) of the

31 gross income of the business when the electricity, current, power,
32 steam, coal, natural gas, liquefied petroleum gas or other fuel is
33 sold to or used by a manufacturer, custom processor or public
34 service company for industrial purposes, which shall include that
35 used to generate electricity, to operate an electrical
36 distribution or transmission system, to operate pipeline
37 compressor or pumping stations or to operate railroad
38 locomotives; * * * however, * * * sales of fuel used to produce
39 electric power by a company primarily engaged in the business of
40 producing, generating or distributing electric power for sale
41 shall be exempt from sales tax as provided in Section 27-65-107.

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

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

57 (e) Upon every person operating a telegraph or
58 telephone business for the transmission of messages or
59 conversations between points within this state, there is hereby
60 levied, assessed and shall be collected a tax equal to seven
61 percent (7%) of the gross income of such business, with no
62 deduction or allowance for any part of an intrastate rate charge
63 because of routing across a state line. Charges by one

64 telecommunications provider to another telecommunications provider
65 holding a permit issued under Section 27-65-27 for services that
66 are resold by such other telecommunications provider, including,
67 but not limited to, access charges, shall not be subject to the
68 tax levied pursuant to this paragraph (e). However, any sale of a
69 prepaid telephone calling card or prepaid authorization number, or
70 both, shall be deemed to be the sale of tangible personal property
71 subject only to such taxes imposed by law on the sale of tangible
72 personal property. If the sale of a prepaid telephone calling
73 card or prepaid authorization number does not take place at the
74 vendor's place of business, it shall be conclusively determined to
75 take place at the customer's shipping address. The
76 reauthorization of a prepaid telephone calling card or a prepaid
77 authorization number shall be conclusively determined to take
78 place at the customer's billing address. Except for the
79 provisions governing the sale of a prepaid telephone calling card
80 or prepaid authorization number, this paragraph (e) shall not
81 apply to persons providing mobile telecommunications services that
82 are taxed pursuant to paragraph (g) of this section.

83 (f) Upon every person operating a telegraph or
84 telecommunications business for the transmission of messages or
85 conversations originating in this state or terminating in this
86 state via interstate telecommunications, which are charged to the
87 customer's service address in this state, regardless of where such
88 amount is billed or paid, there is hereby levied, assessed and
89 shall be collected a tax equal to seven percent (7%) of the gross
90 income received by such business from such interstate
91 telecommunications. However, a person, upon proof that he has
92 paid a tax in another state on such event, shall be allowed a
93 credit against the tax imposed in this paragraph (f) on interstate
94 telecommunications charges to the extent that the amount of such
95 tax is properly due and actually paid in such other state and to
96 the extent that the rate of sales tax imposed by and paid to such

97 other state does not exceed the rate of sales tax imposed by this
98 paragraph (f). Charges by one telecommunications provider to
99 another telecommunications provider holding a permit issued under
100 Section 27-65-27 for services that are resold by such other
101 telecommunications provider, including, but not limited to, access
102 charges, shall not be subject to the tax levied pursuant to this
103 paragraph (f). This paragraph (f) shall not apply to persons
104 providing mobile telecommunications services that are taxed
105 pursuant to paragraph (g) of this subsection.

106 (g) (i) Upon every person providing mobile
107 telecommunications services in this state there is hereby levied,
108 assessed and shall be collected:

109 1. A tax equal to seven percent (7%) of the
110 gross income received on such services from all charges for
111 transmission of messages or conversations between points within
112 any single state as they shall be construed to be within this
113 state; and

114 2. A tax equal to seven percent (7%) on the
115 gross income received from all charges for services that originate
116 in one state and terminate in any other state.

117 Charges by one telecommunications provider to another
118 telecommunications provider holding a permit issued under Section
119 27-65-27 for services that are resold by such other
120 telecommunications provider, including, but not limited to, access
121 charges, shall not be subject to the tax levied pursuant to this
122 paragraph (g).

123 (ii) Subject to the provisions of 4 USCS 116(c),
124 the tax levied by this paragraph (g) shall apply only to those
125 charges for mobile telecommunications services subject to tax
126 which are deemed to be provided to a customer by a home service
127 provider pursuant to 4 USCS 117(a), if the customer's place of
128 primary use is located within this state.

129 (iii) A home service provider shall be responsible
130 for obtaining and maintaining the customer's place of primary use.
131 The home service provider shall be entitled to rely on the
132 applicable residential or business street address supplied by such
133 customer, if the home service provider's reliance is in good
134 faith; and the home service provider shall be held harmless from
135 liability for any additional taxes based on a different
136 determination of the place of primary use for taxes that are
137 customarily passed on to the customer as a separate itemized
138 charge. A home service provider shall be allowed to treat the
139 address used for purposes of the tax levied by this chapter for
140 any customer under a service contract in effect on August 1, 2002,
141 as that customer's place of primary use for the remaining term of
142 such service contract or agreement, excluding any extension or
143 renewal of such service contract or agreement. Month-to-month
144 services provided after the expiration of a contract shall be
145 treated as an extension or renewal of such contract or agreement.

146 If the commissioner determines that the address used by a
147 home service provider as a customer's place of primary use does
148 not meet the definition of the term "place of primary use" as
149 defined in this paragraph, the commissioner shall give binding
150 notice to the home service provider to change the place of primary
151 use on a prospective basis from the date of notice of
152 determination; however, the customer shall have the opportunity,
153 prior to such notice of determination, to demonstrate that such
154 address satisfies such definition.

155 The commission has the right to collect any taxes due
156 directly from the home service provider's customer that has failed
157 to provide an address that meets the definition of the term "place
158 of primary use" which resulted in a failure of tax otherwise due
159 being remitted.

160 (iv) For purposes of this paragraph (g):

161 1. "Place of primary use" means the street
162 address representative of where the customer's use of mobile
163 telecommunications services primarily occurs, which shall be
164 either the residential street address of the customer or the
165 primary business street address of the customer.

166 2. "Customer" means the person or entity that
167 contracts with the home service provider for mobile
168 telecommunications services. For determining the place of primary
169 use, in those instances in which the end user of mobile
170 telecommunications services is not the contracting party, the end
171 user of the mobile telecommunications services shall be deemed the
172 customer. The term "customer" shall not include a reseller of
173 mobile telecommunications service, or a serving carrier under an
174 arrangement to serve the customer outside the home service
175 provider's licensed service area.

176 3. "Home service provider" means the
177 facilities-based carrier or reseller with which the customer
178 contracts for the provision of mobile telecommunications services.

179 (h) (i) For purposes of this paragraph (h), "bundled
180 transaction" means a transaction that consists of distinct and
181 identifiable properties or services which are sold for a single
182 nonitemized price but which are treated differently for tax
183 purposes.

184 (ii) In the case of a bundled transaction that
185 includes telecommunications services taxed under this section in
186 which the price of the bundled transaction is attributable to
187 properties or services that are taxable and nontaxable, the
188 portion of the price that is attributable to any nontaxable
189 property or service shall be subject to the tax unless the
190 provider can reasonably identify that portion from its books and
191 records kept in the regular course of business.

192 (iii) In the case of a bundled transaction that
193 includes telecommunications services subject to tax under this

194 section in which the price is attributable to properties or
195 services that are subject to the tax but the tax revenue from the
196 different properties or services are dedicated to different funds
197 or purposes, the provider shall allocate the price among the
198 properties or services:

199 1. By reasonably identifying the portion of
200 the price attributable to each of the properties and services from
201 its books and records kept in the regular course of business; or

202 2. Based on a reasonable allocation
203 methodology approved by the commission.

204 (iv) This paragraph (h) shall not create a right
205 of action for a customer to require that the provider or the
206 commission, for purposes of determining the amount of tax
207 applicable to a bundled transaction, allocate the price to the
208 different portions of the transaction in order to minimize the
209 amount of tax charged to the customer. A customer shall not be
210 entitled to rely on the fact that a portion of the price is
211 attributable to properties or services not subject to tax unless
212 the provider elects, after receiving a written request from the
213 customer in the form required by the provider, to provide
214 verifiable data based upon the provider's books and records that
215 are kept in the regular course of business that reasonably
216 identifies the portion of the price attributable to the properties
217 or services not subject to the tax.

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

225 (3) There is hereby levied, assessed and shall be paid on
226 transportation charges on shipments moving between points within

227 this state when paid directly by the consumer, a tax equal to the
228 rate applicable to the sale of the property being transported.
229 Such tax shall be reported and paid directly to the State Tax
230 Commission by the consumer.

231 **SECTION 2.** This act shall be effective with respect to
232 services reflected on bills submitted by telecommunications
233 service providers to their customers which are dated on or after
234 July 1, 2004, regardless of when such services are provided.