

March 15, 2006

TO THE MISSISSIPPI STATE SENATE:

GOVERNOR'S VETO MESSAGE FOR SENATE BILL 3084

I am returning SB 3084: "AN ACT TO AMEND SECTION 27-69-13, MISSISSIPPI CODE OF 1972, TO INCREASE THE EXCISE TAX ON CIGARETTES; TO AMEND SECTION 27-65-75, MISSISSIPPI CODE OF 1972, TO INCREASE THE PERCENTAGE OF SALES TAX COLLECTED ON RETAIL SALES OF SUCH FOOD WITHIN MUNICIPALITIES THAT IS DISTRIBUTED TO MUNICIPALITIES, AND TO REQUIRE A PORTION OF THE MONTHLY TOBACCO TAX REVENUE TO BE DEPOSITED IN THE EDUCATION ENHANCEMENT FUND AND THE SCHOOL AD VALOREM TAX REDUCTION FUND; TO AMEND SECTION 27-69-31, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A DISCOUNT ON THE ADDITIONAL FACE VALUE OF STAMPS PURCHASED TO COMPLY WITH CERTAIN CIGARETTE EXCISE TAX INCREASES; TO CREATE A NEW SECTION 27-65-26, MISSISSIPPI CODE OF 1972, TO IMPOSE A SEPARATE SALES TAX LEVY ON RETAIL SALES OF CERTAIN FOOD FOR HUMAN CONSUMPTION AND TO REDUCE THE SALES TAX RATE ON SUCH FOOD; TO AMEND SECTION 27-65-17, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO IMPOSE A FEE ON NONSETTLING-MANUFACTURER CIGARETTES; TO REQUIRE MONTHLY REPORTING OF THE NUMBER AND DENOMINATION OF STAMPS AFFIXED TO PACKAGES OF NONSETTLING-MANUFACTURER CIGARETTES, THE NUMBER OF INDIVIDUAL PACKAGES OF NONSETTLING-MANUFACTURER CIGARETTES SOLD OR PURCHASED IN THIS STATE OR OTHERWISE DISTRIBUTED IN THIS STATE FOR SALE IN THE UNITED STATES AND ANY OTHER INFORMATION THE STATE TAX COMMISSION CONSIDERS NECESSARY OR APPROPRIATE TO DETERMINE THE AMOUNT OF THE FEE IMPOSED BY THIS ACT OR TO ENFORCE THIS ACT; TO REQUIRE REGISTRATION OF NONSETTLING MANUFACTURERS WITH THE ATTORNEY GENERAL; TO REQUIRE DEVELOPMENT, MAINTENANCE AND PUBLICATION BY THE ATTORNEY GENERAL OF A LIST OF NONSETTLING MANUFACTURERS THAT HAVE CERTIFIED THEIR COMPLIANCE WITH THIS ACT; TO PROVIDE FOR ENFORCEMENT OF THE REQUIREMENTS IMPOSED BY THIS ACT; TO GRANT PROTECTIONS FROM CIVIL LIABILITY TO NONSETTLING MANUFACTURERS THAT COMPLY WITH THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES" without my approval and assign the following reasons for my veto.

After full consideration, I am vetoing Senate Bill 3084, which proposes to reduce the sales tax on groceries and increase the tax on cigarettes. Senate Bill 3084 is the latest attempt by the Legislature to change the state revenue stream in the middle of tremendous financial uncertainty in the wake of Hurricane Katrina. Reliable, accurate information needs to be developed through proper research before such a tax shift is enacted, but this research has not been done.

In the first week of this session of the Legislature, the Senate passed Senate Bill 2310, with the promise of revenue neutrality for the state General Fund and for our cities and towns, and the House soon followed. Before I could act on this bill, the House Ways and Means Committee realized the claim was inaccurate and passed House Bill 1140 to increase the level of reimbursements to the municipalities, at the expense of the General Fund. However, even the higher reimbursements of House Bill 1140 were not enough to keep the municipalities whole.

I vetoed Senate Bill 2310 on January 18, 2006, because it would have resulted in a loss of some \$1.5 billion revenue to the state over nine years and would have cut sales tax revenues to municipalities by more than \$150 million over nine years. These revenue losses would have inevitably led to lower funding for education and basic services as well as to tax increases, ranging from municipal ad valorem taxes to sales tax increases on products other than groceries to higher income taxes.

After I vetoed Senate Bill 2310, the Senate passed the first version of Senate Bill 3084, again with the claim of revenue neutrality for both the state General Fund and for our cities and towns. The same day, the House passed a different proposal, House Bill 1634, also claiming revenue neutrality. To the credit of the House, House Bill 1534 was the first of the four pieces of legislation which actually held municipalities harmless from the effects of the risky tax swap. However, this was achieved by an increased diversion from the General Fund, and therefore, a larger reduction in state revenue.

The conference report of Senate Bill 3084 is now the fifth version of the tax swap the Legislature has considered, and its proponents again claim it is revenue neutral. This legislation would cut the sales tax on groceries from 7% to 3½%; increase the excise tax on a pack of cigarettes from 18 cents to 80 cents on July 1, 2006, and from 80 cents to \$1 on July 1, 2007; and establish an additional fee of 43 cents/pack on cigarettes produced by manufacturers which did not participate in the tobacco settlement in the 1990's, in exchange for immunity from future lawsuits. The fee on the non-settling manufacturers would increase each year by at least 3%.

Senate Bill 3084 as sent to me is not revenue neutral. It will result in lost revenue to the General Fund, and the revenue reduction will increase in the out years. In this time of financial uncertainty, when we continue to seek additional federal assistance to help us recover and rebuild from Katrina, it is irresponsible to cut our own tax revenue, no matter how well intentioned.

In each version of these tax proposals, the supporters of the tax swap concept promise revenue neutrality, but they still do not take into account factors which will cause a net revenue reduction over time. The Legislature is relying on figures supplied by the State Tax Commission, but as its Chairman has pointed out repeatedly, the State Tax Commission has no expertise in estimating future revenue growth rates. Therefore, its estimates are in current dollars and do not take into account the fact that Senate Bill 3084 would replace a growing revenue source (sales tax on groceries) with a declining revenue source (cigarette tax).

For example, when the supporters of this bill claim it is revenue neutral, they claim the sales tax on groceries will generate the same amount of revenue five years from now as it generates today. The possibility of that happening is virtually zero. Sales tax collections have increased 5% each year over the last ten years.

When the supporters of this bill claim it is revenue neutral, they claim that a 10% increase in cigarette prices will cause a 4% reduction in taxable packs sold. However, they do not take into account the recent history of declining smoking rates in Mississippi and across the country. Last week the Washington Post reported that "Americans smoked fewer cigarettes last year than at any time since 1951, and the nation's per capita consumption of tobacco fell to levels not seen since the early 1930's." Nationally, smoking declined 4.2% in 2005 alone and declined 20% in the last six years.

Cigarette smoking and tax revenue have been declining in Mississippi in recent years, with no change in the tax. Cigarette smoking and tax revenue from cigarette sales will decline at a much faster rate if the tax is raised as proposed in SB 3084. Indeed, that is the chief goal of many of the bill's supporters, which is a worthy goal. Yet the legislative proponents greatly underestimate this reduction in tax revenue, which must explain why no fiscal note for the bill, setting out the revenue estimate, was provided beyond years one and two. Every year going forward the reduction in revenue – the loss to the state's programs – will be greater and greater. This is bad policy, especially now.

Last week, when I testified before the Senate Appropriations Committee about Mississippi's needs to recover and rebuild from Katrina, I was asked if our state has cut its taxes and its state revenue in the aftermath of the hurricane. I was told publicly this question had been asked of the Committee. Because of my veto of SB 2310, I truthfully answered that we had not cut our taxes or our revenue. After today's veto, that answer will still be accurate.

Beyond all the other reasons I've mentioned, this bill must be vetoed if we are to have any credibility when we seek the assistance of the federal government and the American people in our recovery and rebuilding. Any legislator ought to recognize that is true.

I remain opposed to raising anybody's taxes, but even those who disagree should see why this bill must be vetoed.

If the Legislature would like to have a study to determine the details of our revenue collections, I will go along. The fact is, the State Tax Commission has consistently said it does not even know the amount of sales tax collected on groceries today, so it (and no one else) cannot say if a different revenue stream would be sufficient to replace the sales tax on groceries.

Knowing the facts is critical before making a decision that involves hundreds of millions of dollars a year – money that citizens depend on for schools, colleges, law enforcement and other state services. Knowing the facts is even more crucial in a time of uncertainty, in which we Mississippians find ourselves.

We do not need to add to that uncertainty by enacting the latest version of a tax scheme just because it may be politically popular.

For these reasons, I urge the members to sustain the veto and reject Senate Bill 3084.

Respectfully Submitted,

Haley Barbour
Governor