

By: Representative Watson

To: Ways and Means

HOUSE BILL NO. 1382

1 AN ACT TO AMEND SECTION 27-65-19, MISSISSIPPI CODE OF 1972,
2 TO INCORPORATE DEFINITIONS REGARDING THE TELECOMMUNICATION
3 INDUSTRY THAT HAVE BEEN ADOPTED BY THE STREAMLINED SALES TAX
4 PROJECT INTO THE PROVISIONS OF LAW THAT PLACE A SALES TAX ON
5 TELECOMMUNICATIONS SERVICES; AND FOR RELATED PURPOSES.

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

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

9 27-65-19. (1) (a) Except as otherwise provided in this
10 subsection, upon every person selling to consumers, electricity,
11 current, power, potable water, steam, coal, natural gas, liquefied
12 petroleum gas or other fuel, there is hereby levied, assessed and
13 shall be collected a tax equal to seven percent (7%) of the gross
14 income of the business. Provided, gross income from sales to
15 consumers of electricity, current, power, natural gas, liquefied
16 petroleum gas or other fuel for residential heating, lighting or
17 other residential noncommercial or nonagricultural use, and sales
18 of potable water for residential, noncommercial or nonagricultural
19 use shall be excluded from taxable gross income of the business.
20 Provided further, upon every such seller using electricity,
21 current, power, potable water, steam, coal, natural gas, liquefied
22 petroleum gas or other fuel for nonindustrial purposes, there is
23 hereby levied, assessed and shall be collected a tax equal to
24 seven percent (7%) of the cost or value of the product or service
25 used.

26 (b) There is hereby levied, assessed and shall be
27 collected a tax equal to one and one-half percent (1-1/2%) of the
28 gross income of the business when the electricity, current, power,

29 steam, coal, natural gas, liquefied petroleum gas or other fuel is
30 sold to or used by a manufacturer, custom processor, technology
31 intensive enterprise meeting the criteria provided for in Section
32 27-65-17(1)(f), or public service company for industrial purposes,
33 which shall include that used to generate electricity, to operate
34 an electrical distribution or transmission system, to operate
35 pipeline compressor or pumping stations or to operate railroad
36 locomotives; however, the tax imposed on natural gas under this
37 paragraph shall not exceed Ten and One-half Cents (10.5¢) per one
38 thousand (1,000) cubic feet and 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) (i) Upon every person providing services in this
58 state, there is hereby levied, assessed and shall be collected:

59 1. A tax equal to seven percent (7%) of the
60 gross income received from all charges for intrastate
61 telecommunications services.

62 2. A tax equal to seven percent (7%) of the
63 gross income received from all charges for interstate
64 telecommunications services.

65 3. A tax equal to seven percent (7%) of the
66 gross income received from all charges for international
67 telecommunications services.

68 4. A tax equal to seven percent (7%) of the
69 gross income received from all charges for ancillary services.

70 5. A tax equal to seven percent (7%) of the
71 gross income received from all charges for products delivered
72 electronically, including, but not limited to, software, music,
73 games, reading materials or ring tones.

74 (ii) A person, upon proof that he has paid a tax
75 in another state on an event described in subparagraph (i) of this
76 paragraph (e), shall be allowed a credit against the tax imposed
77 in this paragraph (e) on interstate telecommunications service
78 charges to the extent that the amount of such tax is properly due
79 and actually paid in such other state and to the extent that the
80 rate of sales tax imposed by and paid in such other state does not
81 exceed the rate of sales tax imposed by this paragraph (e).

82 (iii) Charges by one telecommunications provider
83 to another telecommunications provider holding a permit issued
84 under Section 27-65-27 for services that are resold by such other
85 telecommunications provider, including, but not limited to, access
86 charges, shall not be subject to the tax levied pursuant to this
87 paragraph (e). * * *

88 (iv) For purposes of this paragraph (e):

89 1. "Telecommunications service" means the
90 electronic transmission, conveyance or routing of voice, data,
91 audio, video or any other information or signals to a point, or
92 between points. The term "telecommunications service" includes
93 such transmission, conveyance or routing in which computer
94 processing applications are used to act on the form, code or

95 protocol of the content for purposes of transmission, conveyance
96 or routing without regard to whether such service is referred to
97 as voice over Internet protocol services or is classified by the
98 Federal Communications Commission as enhanced or value added. The
99 term "telecommunications service" shall not include:

100 a. Data processing and information
101 services that allow data to be generated, acquired, stored,
102 processed or retrieved and delivered by an electronic transmission
103 to a purchaser where such purchaser's primary purpose for the
104 underlying transaction is the processed data or information;

105 b. Installation and maintenance of
106 wiring or equipment on a customer's premises;

107 c. Tangible personal property;

108 d. Advertising, including, but not
109 limited to, directory advertising;

110 e. Billing and collection services
111 provided to third parties;

112 f. Internet access service;

113 g. Radio and television audio and video
114 programming services regardless of the medium, including the
115 furnishing of transmission, conveyance and routing of such
116 services by the programming service provider. Radio and
117 television audio and video programming services shall include, but
118 not be limited to, cable service as defined in 47 USCS 522(6) and
119 audio and video programming services delivered by commercial
120 mobile radio service providers, as defined in 47 CFR 20.3;

121 h. Ancillary services; or

122 i. Digital products delivered
123 electronically, including, but not limited to, software, music,
124 video, reading materials or ring tones.

125 2. "Ancillary services" means services that
126 are not associated with or incidental to the provision of
127 telecommunications services, including, but not limited to,

128 detailed telecommunications billing, directory assistance,
129 vertical service and voice mail service.

130 a. "Conference bridging" means an
131 ancillary service that links two (2) or more participants of an
132 audio or video conference call and may include the provision of a
133 telephone number. Conference bridging does not include the
134 telecommunications services used to reach the conference bridge.

135 b. "Detailed telecommunications billing"
136 service means an ancillary service of separately stating
137 information pertaining to individual calls on a customer's billing
138 statement.

139 c. "Directory assistance" means an
140 ancillary service of providing telephone number information and/or
141 address information.

142 d. "Vertical service" means an ancillary
143 service that is offered in connection with one (1) or more
144 telecommunications services, which offers advanced calling
145 features that allow customers to identify callers and to manage
146 multiple calls and call connections, including conference bridging
147 services.

148 e. "Voice mail service" means an
149 ancillary service that enables the customer to store, send or
150 receive recorded messages. Voice mail service does not include
151 any vertical services that the customer may be required to have in
152 order to utilize the voice mail service.

153 3. "Intrastate" means telecommunications
154 service that originates in one United States state or United
155 States territory or possession, and terminates in the same United
156 States state or United States territory or possession.

157 4. "Interstate" means a telecommunications
158 service that originates in one United States state or United
159 States territory or possession, and terminates in a different
160 United States state or United States territory or possession.

161 5. "International" means a telecommunications
162 service that originates or terminates in the United States and
163 terminates or originates outside the United States, respectively.

164 (v) For purposes of paragraph (e), the following
165 sourcing rules shall apply:

166 1. Except for the defined telecommunications
167 services in item 3 of this subparagraph, the sales of
168 telecommunications services sold on a call-by-call basis shall be
169 sourced to:

170 a. Each level of taxing jurisdiction
171 where the call originates and terminates in that jurisdiction, or

172 b. Each level of taxing jurisdiction
173 where the call either originates or terminates and in which the
174 service address is also located.

175 2. Except for the defined telecommunications
176 services in item 3 of this subparagraph, a sale of
177 telecommunications services sold on a basis other than a
178 call-by-call basis, is sourced to the customer's place of primary
179 use.

180 3. The sale of the following
181 telecommunications services shall be sourced to each level of
182 taxing jurisdiction as follows:

183 a. A sale of mobile telecommunications
184 services other than air-to-ground radiotelephone service and
185 prepaid calling service is sourced to the customer's place of
186 primary use as required by the Mobile Telecommunications Sourcing
187 Act.

188 * * *

189 A. A home service provider shall be
190 responsible for obtaining and maintaining the customer's place of
191 primary use. The home service provider shall be entitled to rely
192 on the applicable residential or business street address supplied
193 by such customer, if the home service provider's reliance is in

194 good faith; and the home service provider shall be held harmless
195 from liability for any additional taxes based on a different
196 determination of the place of primary use for taxes that are
197 customarily passed on to the customer as a separate itemized
198 charge. A home service provider shall be allowed to treat the
199 address used for purposes of the tax levied by this chapter for
200 any customer under a service contract in effect on August 1, 2002,
201 as that customer's place of primary use for the remaining term of
202 such service contract or agreement, excluding any extension or
203 renewal of such service contract or agreement. Month-to-month
204 services provided after the expiration of a contract shall be
205 treated as an extension or renewal of such contract or agreement.

206 B. If the commissioner determines
207 that the address used by a home service provider as a customer's
208 place of primary use does not meet the definition of the term
209 "place of primary use" as defined in the paragraph, the
210 commissioner shall give binding notice to the home service
211 provider to change the place of primary use on a prospective basis
212 from the date of notice of determination; however, the customer
213 shall have the opportunity, prior to such notice of determination,
214 to demonstrate that such address satisfies the definition.

215 C. The commission has the right to
216 collect any taxes due directly from the home service provider's
217 customer that has failed to provide an address that meets the
218 definition of the term "place of primary use" which resulted in a
219 failure of tax otherwise due being remitted.

220 b. A sale of post-paid calling service
221 is sourced to the origination point of the telecommunications
222 signal as first identified by either:

223 A. The seller's telecommunications
224 system; or

225 B. Information received by the
226 seller from its service provider, where the system used to
227 transport such signals is not that of the seller.

228 c. A sale of a prepaid calling service
229 or prepaid wireless calling service shall be subject to the tax
230 imposed by this paragraph if the sale takes place in this state.
231 If the customer physically purchases a prepaid calling service or
232 prepaid wireless calling service at the vendor's place of
233 business, the sale is deemed to take place at the vendor's place
234 of business. If the customer does not physically purchase the
235 service at the vendor's place of business, the sale of a prepaid
236 calling card or prepaid wireless calling card is deemed to take
237 place at the first of the following locations that applies to the
238 sale:

239 A. The customer's shipping address,
240 if the sale involves a shipment;

241 B. The customer's billing address;

242 C. Any other address of the
243 customer that is known by the vendor; or

244 D. The address of the vendor, or
245 alternatively, in the case of a prepaid wireless calling service,
246 the location associated with the mobile telephone number.

247 4. A sale of a private communication service
248 is sourced as follows:

249 a. Service for a separate charge related
250 to a customer channel termination point is sourced to each level
251 of jurisdiction in which such customer channel termination point
252 is located.

253 b. Service where all customer
254 termination points are located entirely within one (1)
255 jurisdiction or levels of jurisdiction is sourced in such
256 jurisdiction in which the customer channel termination points are
257 located.

258 c. Service for segments of a channel
259 between two (2) customer channel termination points located in
260 different jurisdictions and which segments of channel are
261 separately charged is sourced fifty percent (50%) in each level of
262 jurisdiction in which the customer channel termination points are
263 located.

264 d. Service for segments of a channel
265 located in more than one (1) jurisdiction or levels of
266 jurisdiction and which segments are not separately billed is
267 sourced in each jurisdiction based on the percentage determined by
268 dividing the number of customer channel termination points in such
269 jurisdiction by the total number of customer channel termination
270 points.

271 5. A sale of ancillary services is sourced to
272 the customer's place of primary use.

273 (vi) For the purposes of subparagraph (v) of this
274 paragraph (e):

275 1. "Air-to-ground radiotelephone service"
276 means a radio service, as that term is defined in 47 CFR 22.99, in
277 which common carriers are authorized to offer and provide radio
278 telecommunications service for hire to subscribers in aircraft.

279 2. "Call-by-call basis" means any method of
280 charging for telecommunications services where the price is
281 measured by individual calls.

282 3. "Communications channel" means a physical
283 or virtual path of communications over which signals are
284 transmitted between or among customer channel termination points.

285 4. "Customer" means the person or entity that
286 contracts with the seller of telecommunications services. If the
287 end user of telecommunications services is not the contracting
288 party, the end user of the telecommunications service is the
289 customer of the telecommunications service. Customer does not
290 include a reseller of telecommunications service or for mobile

291 telecommunications service of a serving carrier under an agreement
292 to serve the customer outside the home service provider's licensed
293 service area.

294 5. "Customer channel termination point" means
295 the location where the customer either inputs or receives the
296 communications.

297 6. "End user" means the person who utilizes
298 the telecommunications service. In the case of an entity, "end
299 user" means the individual who utilizes the service on behalf of
300 the entity.

301 7. "Home service provider" has the meaning
302 ascribed to such term in Section 124(5) of Public Law 106-252
303 (Mobile Telecommunications Sourcing Act).

304 8. "Mobile telecommunications service" has
305 the meaning ascribed to such term in Section 124(7) of Public Law
306 106-252 (Mobile Telecommunications Sourcing Act).

307 9. "Place of primary use" means the street
308 address representative of where the customer's use of the
309 telecommunications services primarily occurs, which must be * * *
310 the residential street address * * * or the primary business
311 street address of the customer. In the case of mobile
312 telecommunications services, the place of primary use must be
313 within the licensed service area of the home service provider.

314 10. "Post-paid calling service" means the
315 telecommunications service obtained by making a payment on a
316 call-by-call basis either through the use of a credit card or
317 payment mechanism such as a bank card, travel card, credit card or
318 debit card, or by charge made to a telephone number which is not
319 associated with the origination or termination of the
320 telecommunications service. A post-paid calling service includes
321 a telecommunications service, except a prepaid wireless calling
322 service that would be a prepaid calling service except it is not
323 exclusively a telecommunications service.

324 11. "Prepaid calling service" means the right
325 to access exclusively telecommunications services, which must be
326 paid for in advance and which enables the origination of calls
327 using an access number or authorization code, whether manually or
328 electronically dialed, and that is sold in predetermined units or
329 dollars of which the number declines with use in a known amount.

330 12. "Prepaid wireless calling service" means
331 a telecommunications service that provides the right to utilize
332 mobile wireless service as well as other nontelecommunications
333 services, including the download of digital products delivered
334 electronically, content and ancillary service, which must be paid
335 for in advance that is sold in predetermined units or dollars of
336 which the number declines with use in a known amount.

337 13. "Private communication service" means a
338 telecommunications service that entitles the customer to exclusive
339 or priority use of a communications channel or group of channels
340 between or among termination points, regardless of the manner in
341 which such channel or channels are connected, and includes
342 switching capacity, extension lines, stations and any other
343 associated services that are provided in connection with the use
344 of such channel or channels.

345 14. "Service address" means:

346 a. The location of the
347 telecommunications equipment to which a customer's call is charged
348 and from which the call originates or terminates, regardless of
349 where the call is billed or paid.

350 b. If the location in subitem a of this
351 item 14 is not known, the origination point of the signal of the
352 telecommunications services first identified by either the
353 seller's telecommunications system or in information received by
354 the seller from its service provider, where the system used to
355 transport such signals is not that of the seller.

356 c. If the location in subitems a and b
357 of this item 14 are not known, the location of the customer's
358 place of primary use.

359 (vii) 1. For purposes of this subparagraph (vii),
360 "bundled transaction" means a transaction that consists of
361 distinct and identifiable properties or services which are sold
362 for a single nonitemized price but which are treated differently
363 for tax purposes.

364 2. In the case of a bundled transaction that
365 includes telecommunications services, ancillary services, Internet
366 access, or audio or video programming services taxed under this
367 section in which the price of the bundled transaction is
368 attributable to properties or services that are taxable and
369 nontaxable, the portion of the price that is attributable to any
370 nontaxable property or service shall be subject to the tax unless
371 the provider can reasonably identify that portion from its books
372 and records kept in the regular course of business.

373 3. In the case of a bundled transaction that
374 includes telecommunications services, ancillary services, Internet
375 access, audio or video programming services subject to tax under
376 this section in which the price is attributable to properties or
377 services that are subject to the tax but the tax revenue from the
378 different properties or services are dedicated to different funds
379 or purposes, the provider shall allocate the price among the
380 properties or services:

381 a. By reasonably identifying the
382 portion of the price attributable to each of the properties and
383 services from its books and records kept in the regular course of
384 business; or

385 b. Based on a reasonable
386 allocation methodology approved by the commission.

387 4. This subparagraph (vii) shall not create a
388 right of action for a customer to require that the provider or the

389 commission, for purposes of determining the amount of tax
390 applicable to a bundled transaction, allocate the price to the
391 different portions of the transaction in order to minimize the
392 amount of tax charged to the customer. A customer shall not be
393 entitled to rely on the fact that a portion of the price is
394 attributable to properties or services not subject to tax unless
395 the provider elects, after receiving a written request from the
396 customer in the form required by the provider, to provide
397 verifiable data based upon the provider's books and records that
398 are kept in the regular course of business that reasonably
399 identifies the portion of the price attributable to the properties
400 or services not subject to the tax.

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

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

414 **SECTION 2.** This act shall take effect and be in force from
415 and after July 1, 2007.