

By: Representatives Watson, Turner,
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To: Ways and Means

HOUSE BILL NO. 1459
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 27-65-19, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT THE SALE OF NATURALLY OCCURRING ANTHROPOGENIC
3 CARBON DIOXIDE FOR USE IN AN ENHANCED OIL RECOVERY PROJECT OR FOR
4 PERMANENT SEQUESTRATION IN A GEOLOGICAL FORMATION SHALL BE TAXED
5 AT THE RATE OF 1-1/2%; 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) (i) The one and one-half percent (1-1/2%)
43 industrial rate provided for in this subsection shall also apply
44 when the electricity, current, power, steam, coal, natural gas,
45 liquefied petroleum gas or other fuel is sold to a producer or
46 processor for use directly in the production of poultry or poultry
47 products, the production of livestock and livestock products, the
48 production of domesticated fish and domesticated fish products,
49 the production of marine aquaculture products, the production of
50 plants or food by commercial horticulturists, the processing of
51 milk and milk products, the processing of poultry and livestock
52 feed, and the irrigation of farm crops.

53 (ii) The one and one-half percent (1-1/2%) rate
54 provided for in this subsection shall also apply to the sale of
55 naturally occurring carbon dioxide and anthropogenic carbon
56 dioxide lawfully injected into the earth for:

57 1. Use in an enhanced oil recovery project,
58 including, but not limited to, use for cycling, repressuring or
59 lifting of oil; or

60 2. Permanent sequestration in a geological
61 formation.



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

66 (e) (i) Upon every person providing services in this
67 state, there is hereby levied, assessed and shall be collected:

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

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

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

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

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

83 (ii) A person, upon proof that he has paid a tax
84 in another state on an event described in subparagraph (i) of this
85 paragraph (e), shall be allowed a credit against the tax imposed
86 in this paragraph (e) on interstate telecommunications service
87 charges to the extent that the amount of such tax is properly due
88 and actually paid in such other state and to the extent that the
89 rate of sales tax imposed by and paid in such other state does not
90 exceed the rate of sales tax imposed by this paragraph (e).

91 (iii) Charges by one (1) telecommunications
92 provider to another telecommunications provider holding a permit
93 issued under Section 27-65-27 for services that are resold by such
94 other telecommunications provider, including, but not limited to,



95 access charges, shall not be subject to the tax levied pursuant to
96 this paragraph (e).

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

98 1. "Telecommunications service" means the
99 electronic transmission, conveyance or routing of voice, data,
100 audio, video or any other information or signals to a point, or
101 between points. The term "telecommunications service" includes
102 such transmission, conveyance or routing in which computer
103 processing applications are used to act on the form, code or
104 protocol of the content for purposes of transmission, conveyance
105 or routing without regard to whether such service is referred to
106 as voice over Internet protocol services or is classified by the
107 Federal Communications Commission as enhanced or value added. The
108 term "telecommunications service" shall not include:

109 a. Data processing and information
110 services that allow data to be generated, acquired, stored,
111 processed or retrieved and delivered by an electronic transmission
112 to a purchaser where such purchaser's primary purpose for the
113 underlying transaction is the processed data or information;

114 b. Installation or maintenance of wiring
115 or equipment on a customer's premises;

116 c. Tangible personal property;

117 d. Advertising, including, but not
118 limited to, directory advertising;

119 e. Billing and collection services
120 provided to third parties;

121 f. Internet access service;

122 g. Radio and television audio and video
123 programming services regardless of the medium, including the
124 furnishing of transmission, conveyance and routing of such
125 services by the programming service provider. Radio and
126 television audio and video programming services shall include, but
127 not be limited to, cable service as defined in 47 USC 522(6) and



128 audio and video programming services delivered by commercial
129 mobile radio service providers, as defined in 47 CFR 20.3;

130 h. Ancillary services; or

131 i. Digital products delivered
132 electronically, including, but not limited to, software, music,
133 video, reading materials or ring tones.

134 2. "Ancillary services" means services that
135 are associated with or incidental to the provision of
136 telecommunications services, including, but not limited to,
137 detailed telecommunications billing, directory assistance,
138 vertical service and voice mail service.

139 a. "Conference bridging" means an
140 ancillary service that links two (2) or more participants of an
141 audio or video conference call and may include the provision of a
142 telephone number. Conference bridging does not include the
143 telecommunications services used to reach the conference bridge.

144 b. "Detailed telecommunications billing
145 service" means an ancillary service of separately stating
146 information pertaining to individual calls on a customer's billing
147 statement.

148 c. "Directory assistance" means an
149 ancillary service of providing telephone number information and/or
150 address information.

151 d. "Vertical service" means an ancillary
152 service that is offered in connection with one or more
153 telecommunications services, which offers advanced calling
154 features that allow customers to identify callers and to manage
155 multiple calls and call connections, including conference bridging
156 services.

157 e. "Voice mail service" means an
158 ancillary service that enables the customer to store, send or
159 receive recorded messages. Voice mail service does not include



160 any vertical services that the customer may be required to have in
161 order to utilize the voice mail service.

162 3. "Intrastate" means telecommunication
163 service that originates in one (1) United States state or United
164 States territory or possession, and terminates in the same United
165 States state or United States territory or possession.

166 4. "Interstate" means a telecommunications
167 service that originates in one (1) United States state or United
168 States territory or possession, and terminates in a different
169 United States state or United States territory or possession.

170 5. "International" means a telecommunications
171 service that originates or terminates in the United States and
172 terminates or originates outside the United States, respectively.

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

175 1. Except for the defined telecommunications
176 services in item 3 of this subparagraph, the sales of
177 telecommunications services sold on a call-by-call basis shall be
178 sourced to:

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

181 b. Each level of taxing jurisdiction
182 where the call either originates or terminates and in which the
183 service address is also located.

184 2. Except for the defined telecommunications
185 services in item 3 of this subparagraph, a sale of
186 telecommunications services sold on a basis other than a
187 call-by-call basis, is sourced to the customer's place of primary
188 use.

189 3. The sale of the following
190 telecommunications services shall be sourced to each level of
191 taxing jurisdiction as follows:



192 a. A sale of mobile telecommunications
193 services other than air-to-ground radiotelephone service and
194 prepaid calling service is sourced to the customer's place of
195 primary use as required by the Mobile Telecommunication Sourcing
196 Act.

197 A. A home service provider shall be
198 responsible for obtaining and maintaining the customer's place of
199 primary use. The home service provider shall be entitled to rely
200 on the applicable residential or business street address supplied
201 by such customer, if the home service provider's reliance is in
202 good faith; and the home service provider shall be held harmless
203 from liability for any additional taxes based on a different
204 determination of the place of primary use for taxes that are
205 customarily passed on to the customer as a separate itemized
206 charge. A home service provider shall be allowed to treat the
207 address used for purposes of the tax levied by this chapter for
208 any customer under a service contract in effect on August 1, 2002,
209 as that customer's place of primary use for the remaining term of
210 such service contract or agreement, excluding any extension or
211 renewal of such service contract or agreement. Month-to-month
212 services provided after the expiration of a contract shall be
213 treated as an extension or renewal of such contract or agreement.

214 B. If the commissioner determines
215 that the address used by a home service provider as a customer's
216 place of primary use does not meet the definition of the term
217 "place of primary use" as defined in subitem a.A of this item 3,
218 the commissioner shall give binding notice to the home service
219 provider to change the place of primary use on a prospective basis
220 from the date of notice of determination; however, the customer
221 shall have the opportunity, prior to such notice of determination,
222 to demonstrate that such address satisfies the definition.

223 C. The commission has the right to
224 collect any taxes due directly from the home service provider's



225 customer that has failed to provide an address that meets the
226 definition of the term "place of primary use" which resulted in a
227 failure of tax otherwise due being remitted.

228 b. A sale of postpaid calling service is
229 sourced to the origination point of the telecommunications signal
230 as first identified by either:

231 A. The seller's telecommunications
232 system; or

233 B. Information received by the
234 seller from its service provider, where the system used to
235 transport such signals is not that of the seller.

236 c. A sale of a prepaid calling service
237 or prepaid wireless calling service shall be subject to the tax
238 imposed by this paragraph if the sale takes place in this state.
239 If the customer physically purchases a prepaid calling service or
240 prepaid wireless calling service at the vendor's place of
241 business, the sale is deemed to take place at the vendor's place
242 of business. If the customer does not physically purchase the
243 service at the vendor's place of business, the sale of a prepaid
244 calling card or prepaid wireless calling card is deemed to take
245 place at the first of the following locations that applies to the
246 sale:

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

249 B. The customer's billing address;

250 C. Any other address of the
251 customer that is known by the vendor; or

252 D. The address of the vendor, or
253 alternatively, in the case of a prepaid wireless calling service,
254 the location associated with the mobile telephone number.

255 4. A sale of a private communication service
256 is sourced as follows:



257 a. Service for a separate charge related
258 to a customer channel termination point is sourced to each level
259 of jurisdiction in which such customer channel termination point
260 is located.

261 b. Service where all customer
262 termination points are located entirely within one (1)
263 jurisdiction or levels of jurisdiction is sourced in such
264 jurisdiction in which the customer channel termination points are
265 located.

266 c. Service for segments of a channel
267 between two (2) customer channel termination points located in
268 different jurisdictions and which segment of channel are
269 separately charged is sourced fifty percent (50%) in each level of
270 jurisdiction in which the customer channel termination points are
271 located.

272 d. Service for segments of a channel
273 located in more than one jurisdiction or levels of jurisdiction
274 and which segments are not separately billed is sourced in each
275 jurisdiction based on the percentage determined by dividing the
276 number of customer channel termination points in such jurisdiction
277 by the total number of customer channel termination points.

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

280 (vi) For purpose of subparagraph (v) of this
281 paragraph (e):

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

286 2. "Call-by-call basis" means any method of
287 charging for telecommunications services where the price is
288 measured by individual calls.



289 3. "Communications channel" means a physical
290 or virtual path of communications over which signals are
291 transmitted between or among customer channel termination points.

292 4. "Customer" means the person or entity that
293 contracts with the seller of telecommunications services. If the
294 end user of telecommunications services is not the contracting
295 party, the end user of the telecommunications service is the
296 customer of the telecommunications service. Customer does not
297 include a reseller of telecommunications service or for mobile
298 telecommunications service of a serving carrier under an agreement
299 to serve the customer outside the home service provider's licensed
300 service area.

301 5. "Customer channel termination point" means
302 the location where the customer either inputs or receives the
303 communications.

304 6. "End user" means the person who utilizes
305 the telecommunications service. In the case of an entity, "end
306 user" means the individual who utilizes the service on behalf of
307 the entity.

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

311 8. "Mobile telecommunications service" has
312 the meaning ascribed to such term in Section 124(7) of Public Law
313 106-252 (Mobile Telecommunications Sourcing Act).

314 9. "Place of primary use" means the street
315 address representative of where the customer's use of the
316 telecommunications service primarily occurs, which must be the
317 residential street address or the primary business street address
318 of the customer. In the case of mobile telecommunications
319 services, the place of primary use must be within the licensed
320 service area of the home service provider.



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

331 11. "Prepaid calling service" means the right
332 to access exclusively telecommunication services, which must be
333 paid for in advance and which enables the origination of calls
334 using an access number or authorization code, whether manually or
335 electronically dialed, and that is sold in predetermined units or
336 dollars of which the number declines with use in a known amount.

337 12. "Prepaid wireless calling service" means
338 a telecommunications service that provides the right to utilize
339 mobile wireless service as well as other nontelecommunications
340 services, including the download of digital products delivered
341 electronically, content and ancillary service, which must be paid
342 for in advance that is sold in predetermined units or dollars of
343 which the number declines with use in a known amount.

344 13. "Private communication service" means a
345 telecommunication service that entitles the customer to exclusive
346 or priority use of a communications channel or group of channels
347 between or among termination points, regardless of the manner in
348 which such channel or channels are connected, and includes
349 switching capacity, extension lines, stations and any other
350 associated services that are provided in connection with the use
351 of such channel or channels.

352 14. "Service address" means:



353 a. The location of the
354 telecommunications equipment to which a customer's call is charged
355 and from which the call originates or terminates, regardless of
356 where the call is billed or paid.

357 b. If the location in subitem a of this
358 item 14 is not known, the origination point of the signal of the
359 telecommunications services first identified by either the
360 seller's telecommunications system or in information received by
361 the seller from its service provider, where the system used to
362 transport such signals is not that of the seller.

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

366 (vii) 1. For purposes of this subparagraph (vii),
367 "bundled transaction" means a transaction that consists of
368 distinct and identifiable properties or services which are sold
369 for a single nonitemized price but which are treated differently
370 for tax purposes.

371 2. In the case of a bundled transaction that
372 includes telecommunications services, ancillary services, Internet
373 access, or audio or video programming services taxed under this
374 chapter in which the price of the bundled transaction is
375 attributable to properties or services that are taxable and
376 nontaxable, the portion of the price that is attributable to any
377 nontaxable property or service shall be subject to the tax unless
378 the provider can reasonably identify that portion from its books
379 and records kept in the regular course of business.

380 3. In the case of a bundled transaction that
381 includes telecommunications services, ancillary services, Internet
382 access, audio or video programming services subject to tax under
383 this chapter in which the price is attributable to properties or
384 services that are subject to the tax but the tax revenue from the
385 different properties or services are dedicated to different funds



386 or purposes, the provider shall allocate the price among the
387 properties or services:

388 a. By reasonably identifying the
389 portion of the price attributable to each of the properties and
390 services from its books and records kept in the regular course of
391 business; or

392 b. Based on a reasonable allocation
393 methodology approved by the commission.

394 4. This subparagraph (vii) shall not create a
395 right of action for a customer to require that the provider or the
396 commission, for purposes of determining the amount of tax
397 applicable to a bundled transaction, allocate the price to the
398 different portions of the transaction in order to minimize the
399 amount of tax charged to the customer. A customer shall not be
400 entitled to rely on the fact that a portion of the price is
401 attributable to properties or services not subject to tax unless
402 the provider elects, after receiving a written request from the
403 customer in the form required by the provider, to provide
404 verifiable data based upon the provider's books and records that
405 are kept in the regular course of business that reasonably
406 identifies the portion of the price attributable to the properties
407 or services not subject to the tax.

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

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



419 Such tax shall be reported and paid directly to the State Tax
420 Commission by the consumer.

421 **SECTION 2.** Nothing in this act shall affect or defeat any
422 claim, assessment, appeal, suit, right or cause of action for
423 taxes due or accrued under the sales tax laws before the date on
424 which this act becomes effective, whether such claims,
425 assessments, appeals, suits or actions have been begun before the
426 date on which this act becomes effective or are begun thereafter;
427 and the provisions of the sales tax laws are expressly continued
428 in full force, effect and operation for the purpose of the
429 assessment, collection and enrollment of liens for any taxes due
430 or accrued and the execution of any warrant under such laws before
431 the date on which this act becomes effective, and for the
432 imposition of any penalties, forfeitures or claims for failure to
433 comply with such laws.

434 **SECTION 3.** This act shall take effect and be in force from
435 and after July 1, 2009.

