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To: Ways and Means

HOUSE BILL NO. 582
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 27-65-19, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT CERTAIN SALES OF UTILITIES TO CHURCHES SHALL BE
3 EXEMPT FROM SALES TAXATION; AND FOR RELATED PURPOSES.

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

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

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

24 (ii) Gross income from sales to a church that is
25 exempt from federal income taxation under 26 USCS Section
26 501(c)(3) of electricity, current, power, natural gas, liquefied
27 petroleum gas or other fuel for heating, lighting or other use,



28 and sales of potable water to such a church shall be excluded from
29 taxable gross income of the business if the electricity, current,
30 power, natural gas, liquefied petroleum gas or potable water is
31 utilized on property that is primarily used for religious or
32 educational purposes.

33 (b) There is hereby levied, assessed and shall be
34 collected a tax equal to one and one-half percent (1-1/2%) of the
35 gross income of the business when the electricity, current, power,
36 steam, coal, natural gas, liquefied petroleum gas or other fuel is
37 sold to or used by a manufacturer, custom processor, technology
38 intensive enterprise meeting the criteria provided for in Section
39 27-65-17(1)(f), or public service company for industrial purposes,
40 which shall include that used to generate electricity, to operate
41 an electrical distribution or transmission system, to operate
42 pipeline compressor or pumping stations or to operate railroad
43 locomotives; however, the tax imposed on natural gas under this
44 paragraph shall not exceed Ten and One-half Cents (10.5¢) per one
45 thousand (1,000) cubic feet and sales of fuel used to produce
46 electric power by a company primarily engaged in the business of
47 producing, generating or distributing electric power for sale
48 shall be exempt from sales tax as provided in Section 27-65-107.

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



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

64 1. Use in an enhanced oil recovery project,
65 including, but not limited to, use for cycling, repressuring or
66 lifting of oil; or

67 2. Permanent sequestration in a geological
68 formation.

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

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

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

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

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

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

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

90 (ii) A person, upon proof that he has paid a tax
91 in another state on an event described in subparagraph (i) of this
92 paragraph (e), shall be allowed a credit against the tax imposed



93 in this paragraph (e) on interstate telecommunications service
94 charges to the extent that the amount of such tax is properly due
95 and actually paid in such other state and to the extent that the
96 rate of sales tax imposed by and paid in such other state does not
97 exceed the rate of sales tax imposed by this paragraph (e).

98 (iii) Charges by one (1) telecommunications
99 provider to another telecommunications provider holding a permit
100 issued under Section 27-65-27 for services that are resold by such
101 other telecommunications provider, including, but not limited to,
102 access charges, shall not be subject to the tax levied pursuant to
103 this paragraph (e).

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

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

116 a. Data processing and information
117 services that allow data to be generated, acquired, stored,
118 processed or retrieved and delivered by an electronic transmission
119 to a purchaser where such purchaser's primary purpose for the
120 underlying transaction is the processed data or information;

121 b. Installation or maintenance of wiring
122 or equipment on a customer's premises;

123 c. Tangible personal property;

124 d. Advertising, including, but not

125 limited to, directory advertising;



126 e. Billing and collection services
127 provided to third parties;

128 f. Internet access service;

129 g. Radio and television audio and video
130 programming services regardless of the medium, including the
131 furnishing of transmission, conveyance and routing of such
132 services by the programming service provider. Radio and
133 television audio and video programming services shall include, but
134 not be limited to, cable service as defined in 47 USCS 522(6) and
135 audio and video programming services delivered by commercial
136 mobile radio service providers, as defined in 47 CFR 20.3;

137 h. Ancillary services; or

138 i. Digital products delivered
139 electronically, including, but not limited to, software, music,
140 video, reading materials or ring tones.

141 2. "Ancillary services" means services that
142 are associated with or incidental to the provision of
143 telecommunications services, including, but not limited to,
144 detailed telecommunications billing, directory assistance,
145 vertical service and voice mail service.

146 a. "Conference bridging" means an
147 ancillary service that links two (2) or more participants of an
148 audio or video conference call and may include the provision of a
149 telephone number. Conference bridging does not include the
150 telecommunications services used to reach the conference bridge.

151 b. "Detailed telecommunications billing
152 service" means an ancillary service of separately stating
153 information pertaining to individual calls on a customer's billing
154 statement.

155 c. "Directory assistance" means an
156 ancillary service of providing telephone number information and/or
157 address information.



158 d. "Vertical service" means an ancillary
159 service that is offered in connection with one or more
160 telecommunications services, which offers advanced calling
161 features that allow customers to identify callers and to manage
162 multiple calls and call connections, including conference bridging
163 services.

164 e. "Voice mail service" means an
165 ancillary service that enables the customer to store, send or
166 receive recorded messages. Voice mail service does not include
167 any vertical services that the customer may be required to have in
168 order to utilize the voice mail service.

169 3. "Intrastate" means telecommunications
170 service that originates in one (1) United States state or United
171 States territory or possession, and terminates in the same United
172 States state or United States territory or possession.

173 4. "Interstate" means a telecommunications
174 service that originates in one (1) United States state or United
175 States territory or possession, and terminates in a different
176 United States state or United States territory or possession.

177 5. "International" means a telecommunications
178 service that originates or terminates in the United States and
179 terminates or originates outside the United States, respectively.

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

182 1. Except for the defined telecommunications
183 services in item 3 of this subparagraph, the sales of
184 telecommunications services sold on a call-by-call basis shall be
185 sourced to:

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

188 b. Each level of taxing jurisdiction
189 where the call either originates or terminates and in which the
190 service address is also located.



191 2. Except for the defined telecommunications
192 services in item 3 of this subparagraph, a sale of
193 telecommunications services sold on a basis other than a
194 call-by-call basis, is sourced to the customer's place of primary
195 use.

196 3. The sale of the following
197 telecommunications services shall be sourced to each level of
198 taxing jurisdiction as follows:

199 a. A sale of mobile telecommunications
200 services other than air-to-ground radiotelephone service and
201 prepaid calling service is sourced to the customer's place of
202 primary use as required by the Mobile Telecommunication Sourcing
203 Act.

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

221 B. If the commissioner determines
222 that the address used by a home service provider as a customer's
223 place of primary use does not meet the definition of the term



224 "place of primary use" as defined in subitem a.A. of this item 3,
225 the commissioner shall give binding notice to the home service
226 provider to change the place of primary use on a prospective basis
227 from the date of notice of determination; however, the customer
228 shall have the opportunity, prior to such notice of determination,
229 to demonstrate that such address satisfies the definition.

230 C. The department has the right to
231 collect any taxes due directly from the home service provider's
232 customer that has failed to provide an address that meets the
233 definition of the term "place of primary use" which resulted in a
234 failure of tax otherwise due being remitted.

235 b. A sale of postpaid calling service is
236 sourced to the origination point of the telecommunications signal
237 as first identified by either:

238 A. The seller's telecommunications
239 system; or

240 B. Information received by the
241 seller from its service provider, where the system used to
242 transport such signals is not that of the seller.

243 c. A sale of a prepaid calling service
244 or prepaid wireless calling service shall be subject to the tax
245 imposed by this paragraph if the sale takes place in this state.
246 If the customer physically purchases a prepaid calling service or
247 prepaid wireless calling service at the vendor's place of
248 business, the sale is deemed to take place at the vendor's place
249 of business. If the customer does not physically purchase the
250 service at the vendor's place of business, the sale of a prepaid
251 calling card or prepaid wireless calling card is deemed to take
252 place at the first of the following locations that applies to the
253 sale:

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

256 B. The customer's billing address;



257 C. Any other address of the
258 customer that is known by the vendor; or

259 D. The address of the vendor, or
260 alternatively, in the case of a prepaid wireless calling service,
261 the location associated with the mobile telephone number.

262 4. A sale of a private communication service
263 is sourced as follows:

264 a. Service for a separate charge related
265 to a customer channel termination point is sourced to each level
266 of jurisdiction in which such customer channel termination point
267 is located.

268 b. Service where all customer
269 termination points are located entirely within one (1)
270 jurisdiction or levels of jurisdiction is sourced in such
271 jurisdiction in which the customer channel termination points are
272 located.

273 c. Service for segments of a channel
274 between two (2) customer channel termination points located in
275 different jurisdictions and which segments of a channel are
276 separately charged is sourced fifty percent (50%) in each level of
277 jurisdiction in which the customer channel termination points are
278 located.

279 d. Service for segments of a channel
280 located in more than one (1) jurisdiction or levels of
281 jurisdiction and which segments are not separately billed is
282 sourced in each jurisdiction based on the percentage determined by
283 dividing the number of customer channel termination points in such
284 jurisdiction by the total number of customer channel termination
285 points.

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

288 (vi) For purposes of subparagraph (v) of this
289 paragraph (e):



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

294 2. "Call-by-call basis" means any method of
295 charging for telecommunications services where the price is
296 measured by individual calls.

297 3. "Communications channel" means a physical
298 or virtual path of communications over which signals are
299 transmitted between or among customer channel termination points.

300 4. "Customer" means the person or entity that
301 contracts with the seller of telecommunications services. If the
302 end user of telecommunications services is not the contracting
303 party, the end user of the telecommunications service is the
304 customer of the telecommunications service. Customer does not
305 include a reseller of telecommunications service or for mobile
306 telecommunications service of a serving carrier under an agreement
307 to serve the customer outside the home service provider's licensed
308 service area.

309 5. "Customer channel termination point" means
310 the location where the customer either inputs or receives the
311 communications.

312 6. "End user" means the person who utilizes
313 the telecommunications service. In the case of an entity, "end
314 user" means the individual who utilizes the service on behalf of
315 the entity.

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

319 8. "Mobile telecommunications service" has
320 the meaning ascribed to such term in Section 124(7) of Public Law
321 106-252 (Mobile Telecommunications Sourcing Act).



322 9. "Place of primary use" means the street
323 address representative of where the customer's use of the
324 telecommunications service primarily occurs, which must be the
325 residential street address or the primary business street address
326 of the customer. In the case of mobile telecommunications
327 services, the place of primary use must be within the licensed
328 service area of the home service provider.

329 10. "Post-paid calling service" means the
330 telecommunications service obtained by making a payment on a
331 call-by-call basis either through the use of a credit card or
332 payment mechanism such as a bank card, travel card, credit card or
333 debit card, or by charge made to a telephone number which is not
334 associated with the origination or termination of the
335 telecommunications service. A post-paid calling service includes
336 a telecommunications service, except a prepaid wireless calling
337 service that would be a prepaid calling service except it is not
338 exclusively a telecommunications service.

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

345 12. "Prepaid wireless calling service" means
346 a telecommunications service that provides the right to utilize
347 mobile wireless service as well as other nontelecommunications
348 services, including the download of digital products delivered
349 electronically, content and ancillary service, which must be paid
350 for in advance that is sold in predetermined units or dollars of
351 which the number declines with use in a known amount.

352 13. "Private communication service" means a
353 telecommunications service that entitles the customer to exclusive
354 or priority use of a communications channel or group of channels



355 between or among termination points, regardless of the manner in
356 which such channel or channels are connected, and includes
357 switching capacity, extension lines, stations and any other
358 associated services that are provided in connection with the use
359 of such channel or channels.

360 14. "Service address" means:

361 a. The location of the
362 telecommunications equipment to which a customer's call is charged
363 and from which the call originates or terminates, regardless of
364 where the call is billed or paid.

365 b. If the location in subitem a of this
366 item 14 is not known, the origination point of the signal of the
367 telecommunications services first identified by either the
368 seller's telecommunications system or in information received by
369 the seller from its service provider, where the system used to
370 transport such signals is not that of the seller.

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

374 (vii) 1. For purposes of this subparagraph (vii),
375 "bundled transaction" means a transaction that consists of
376 distinct and identifiable properties or services which are sold
377 for a single nonitemized price but which are treated differently
378 for tax purposes.

379 2. In the case of a bundled transaction that
380 includes telecommunications services, ancillary services, Internet
381 access, or audio or video programming services taxed under this
382 chapter in which the price of the bundled transaction is
383 attributable to properties or services that are taxable and
384 nontaxable, the portion of the price that is attributable to any
385 nontaxable property or service shall be subject to the tax unless
386 the provider can reasonably identify that portion from its books
387 and records kept in the regular course of business.



388 3. In the case of a bundled transaction that
389 includes telecommunications services, ancillary services, Internet
390 access, audio or video programming services subject to tax under
391 this chapter in which the price is attributable to properties or
392 services that are subject to the tax but the tax revenue from the
393 different properties or services are dedicated to different funds
394 or purposes, the provider shall allocate the price among the
395 properties or services:

396 a. By reasonably identifying the portion
397 of the price attributable to each of the properties and services
398 from its books and records kept in the regular course of business;
399 or

400 b. Based on a reasonable allocation
401 methodology approved by the department.

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

416 (2) Persons making sales to consumers of electricity,
417 current, power, natural gas, liquefied petroleum gas or other fuel
418 for residential heating, lighting or other residential
419 noncommercial or nonagricultural use or sales of potable water for
420 residential, noncommercial or nonagricultural use shall indicate



421 on each statement rendered to customers that such charges are
422 exempt from sales taxes.

423 (3) There is hereby levied, assessed and shall be paid on
424 transportation charges on shipments moving between points within
425 this state when paid directly by the consumer, a tax equal to the
426 rate applicable to the sale of the property being transported.
427 Such tax shall be reported and paid directly to the Department of
428 Revenue by the consumer.

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

442 **SECTION 3.** This act shall take effect and be in force from
443 and after July 1, 2012.

