

By: Representative Smith (39th)

To: Ways and Means

HOUSE BILL NO. 841

1 AN ACT TO AMEND SECTION 27-65-19, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE THAT THE SALE OF ELECTRICITY, CURRENT, POWER, STEAM,
 3 COAL, NATURAL GAS, LIQUEFIED PETROLEUM GAS OR OTHER FUEL TO A
 4 PRODUCER OF OIL AND GAS FOR USE DIRECTLY IN ENHANCED OIL RECOVERY
 5 USING CARBON DIOXIDE OR THE PERMANENT SEQUESTRATION OF CARBON
 6 DIOXIDE IN A GEOLOGICAL FORMATION SHALL BE TAXED AT THE RATE OF
 7 1-1/2%; AND FOR RELATED PURPOSES.

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

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

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



21 noncommercial or nonagricultural use shall be excluded from
22 taxable gross income of the business. Provided further, upon
23 every such seller using electricity, current, power, potable
24 water, steam, coal, natural gas, liquefied petroleum gas or other
25 fuel for nonindustrial purposes, there is hereby levied, assessed
26 and shall be collected a tax equal to seven percent (7%) of the
27 cost or value of the product or service used.

28 (ii) Gross income from sales to a church that is
29 exempt from federal income taxation under 26 USCS Section
30 501(c)(3) of electricity, current, power, natural gas, liquefied
31 petroleum gas or other fuel for heating, lighting or other use,
32 and sales of potable water to such a church shall be excluded from
33 taxable gross income of the business if the electricity, current,
34 power, natural gas, liquefied petroleum gas or potable water is
35 utilized on property that is primarily used for religious or
36 educational purposes.

37 (b) There is hereby levied, assessed and shall be
38 collected a tax equal to one and one-half percent (1-1/2%) of the
39 gross income of the business when the electricity, current, power,
40 steam, coal, natural gas, liquefied petroleum gas or other fuel is
41 sold to or used by a manufacturer, custom processor, technology
42 intensive enterprise meeting the criteria provided for in Section
43 27-65-17(1)(f), or public service company for industrial purposes,
44 which shall include that used to generate electricity, to operate
45 an electrical distribution or transmission system, to operate



46 pipeline compressor or pumping stations or to operate railroad
47 locomotives; however, the tax imposed on natural gas under this
48 paragraph shall not exceed Ten and One-half Cents (10.5¢) per one
49 thousand (1,000) cubic feet and sales of fuel used to produce
50 electric power by a company primarily engaged in the business of
51 producing, generating or distributing electric power for sale
52 shall be exempt from sales tax as provided in Section 27-65-107.

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

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

68 1. Use in an enhanced oil recovery project,
69 including, but not limited to, use for cycling, repressuring or
70 lifting of oil; or



71 2. Permanent sequestration in a geological
72 formation.

73 (iii) The one and one-half percent (1-1/2%)
74 industrial rate provided for in this subsection shall also apply
75 when the electricity, current, power, steam, coal, natural gas,
76 liquefied petroleum gas or other fuel is sold to a producer of oil
77 and gas for use directly in enhanced oil recovery using carbon
78 dioxide and/or the permanent sequestration of carbon dioxide in a
79 geological formation.

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

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

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

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

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



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

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

101 (ii) A person, upon proof that he has paid a tax
102 in another state on an event described in subparagraph (i) of this
103 paragraph (e), shall be allowed a credit against the tax imposed
104 in this paragraph (e) on interstate telecommunications service
105 charges to the extent that the amount of such tax is properly due
106 and actually paid in such other state and to the extent that the
107 rate of sales tax imposed by and paid in such other state does not
108 exceed the rate of sales tax imposed by this paragraph (e).

109 (iii) Charges by one (1) telecommunications
110 provider to another telecommunications provider holding a permit
111 issued under Section 27-65-27 for services that are resold by such
112 other telecommunications provider, including, but not limited to,
113 access charges, shall not be subject to the tax levied pursuant to
114 this paragraph (e).

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

116 1. "Telecommunications service" means the
117 electronic transmission, conveyance or routing of voice, data,
118 audio, video or any other information or signals to a point, or
119 between points. The term "telecommunications service" includes



120 such transmission, conveyance or routing in which computer
121 processing applications are used to act on the form, code or
122 protocol of the content for purposes of transmission, conveyance
123 or routing without regard to whether such service is referred to
124 as voice over Internet protocol services or is classified by the
125 Federal Communications Commission as enhanced or value added. The
126 term "telecommunications service" shall not include:

127 a. Data processing and information
128 services that allow data to be generated, acquired, stored,
129 processed or retrieved and delivered by an electronic transmission
130 to a purchaser where such purchaser's primary purpose for the
131 underlying transaction is the processed data or information;

132 b. Installation or maintenance of wiring
133 or equipment on a customer's premises;

134 c. Tangible personal property;

135 d. Advertising, including, but not
136 limited to, directory advertising;

137 e. Billing and collection services
138 provided to third parties;

139 f. Internet access service;

140 g. Radio and television audio and video
141 programming services regardless of the medium, including the
142 furnishing of transmission, conveyance and routing of such
143 services by the programming service provider. Radio and
144 television audio and video programming services shall include, but



145 not be limited to, cable service as defined in 47 USCS 522(6) and
146 audio and video programming services delivered by commercial
147 mobile radio service providers, as defined in 47 CFR 20.3;

148 h. Ancillary services; or

149 i. Digital products delivered
150 electronically, including, but not limited to, software, music,
151 video, reading materials or ring tones.

152 2. "Ancillary services" means services that
153 are associated with or incidental to the provision of
154 telecommunications services, including, but not limited to,
155 detailed telecommunications billing, directory assistance,
156 vertical service and voice mail service.

157 a. "Conference bridging" means an
158 ancillary service that links two (2) or more participants of an
159 audio or video conference call and may include the provision of a
160 telephone number. Conference bridging does not include the
161 telecommunications services used to reach the conference bridge.

162 b. "Detailed telecommunications billing
163 service" means an ancillary service of separately stating
164 information pertaining to individual calls on a customer's billing
165 statement.

166 c. "Directory assistance" means an
167 ancillary service of providing telephone number information and/or
168 address information.



169 d. "Vertical service" means an ancillary
170 service that is offered in connection with one or more
171 telecommunications services, which offers advanced calling
172 features that allow customers to identify callers and to manage
173 multiple calls and call connections, including conference bridging
174 services.

175 e. "Voice mail service" means an
176 ancillary service that enables the customer to store, send or
177 receive recorded messages. Voice mail service does not include
178 any vertical services that the customer may be required to have in
179 order to utilize the voice mail service.

180 3. "Intrastate" means telecommunications
181 service that originates in one (1) United States state or United
182 States territory or possession, and terminates in the same United
183 States state or United States territory or possession.

184 4. "Interstate" means a telecommunications
185 service that originates in one (1) United States state or United
186 States territory or possession, and terminates in a different
187 United States state or United States territory or possession.

188 5. "International" means a telecommunications
189 service that originates or terminates in the United States and
190 terminates or originates outside the United States, respectively.

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



193 1. Except for the defined telecommunications
194 services in item 3 of this subparagraph, the sales of
195 telecommunications services sold on a call-by-call basis shall be
196 sourced to:

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

199 b. Each level of taxing jurisdiction
200 where the call either originates or terminates and in which the
201 service address is also located.

202 2. Except for the defined telecommunications
203 services in item 3 of this subparagraph, a sale of
204 telecommunications services sold on a basis other than a
205 call-by-call basis, is sourced to the customer's place of primary
206 use.

207 3. The sale of the following
208 telecommunications services shall be sourced to each level of
209 taxing jurisdiction as follows:

210 a. A sale of mobile telecommunications
211 services other than air-to-ground radiotelephone service and
212 prepaid calling service is sourced to the customer's place of
213 primary use as required by the Mobile Telecommunication Sourcing
214 Act.

215 A. A home service provider shall be
216 responsible for obtaining and maintaining the customer's place of
217 primary use. The home service provider shall be entitled to rely



218 on the applicable residential or business street address supplied
219 by such customer, if the home service provider's reliance is in
220 good faith; and the home service provider shall be held harmless
221 from liability for any additional taxes based on a different
222 determination of the place of primary use for taxes that are
223 customarily passed on to the customer as a separate itemized
224 charge. A home service provider shall be allowed to treat the
225 address used for purposes of the tax levied by this chapter for
226 any customer under a service contract in effect on August 1, 2002,
227 as that customer's place of primary use for the remaining term of
228 such service contract or agreement, excluding any extension or
229 renewal of such service contract or agreement. Month-to-month
230 services provided after the expiration of a contract shall be
231 treated as an extension or renewal of such contract or agreement.

232 B. If the commissioner determines
233 that the address used by a home service provider as a customer's
234 place of primary use does not meet the definition of the term
235 "place of primary use" as defined in subitem a.A. of this item 3,
236 the commissioner shall give binding notice to the home service
237 provider to change the place of primary use on a prospective basis
238 from the date of notice of determination; however, the customer
239 shall have the opportunity, prior to such notice of determination,
240 to demonstrate that such address satisfies the definition.

241 C. The department has the right to
242 collect any taxes due directly from the home service provider's



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

246 b. A sale of postpaid calling service is
247 sourced to the origination point of the telecommunications signal
248 as first identified by either:

249 A. The seller's telecommunications
250 system; or

251 B. Information received by the
252 seller from its service provider, where the system used to
253 transport such signals is not that of the seller.

254 c. A sale of a prepaid calling service
255 or prepaid wireless calling service shall be subject to the tax
256 imposed by this paragraph if the sale takes place in this state.
257 If the customer physically purchases a prepaid calling service or
258 prepaid wireless calling service at the vendor's place of
259 business, the sale is deemed to take place at the vendor's place
260 of business. If the customer does not physically purchase the
261 service at the vendor's place of business, the sale of a prepaid
262 calling card or prepaid wireless calling card is deemed to take
263 place at the first of the following locations that applies to the
264 sale:

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

267 B. The customer's billing address;



268 C. Any other address of the
269 customer that is known by the vendor; or

270 D. The address of the vendor, or
271 alternatively, in the case of a prepaid wireless calling service,
272 the location associated with the mobile telephone number.

273 4. A sale of a private communication service
274 is sourced as follows:

275 a. Service for a separate charge related
276 to a customer channel termination point is sourced to each level
277 of jurisdiction in which such customer channel termination point
278 is located.

279 b. Service where all customer
280 termination points are located entirely within one (1)
281 jurisdiction or levels of jurisdiction is sourced in such
282 jurisdiction in which the customer channel termination points are
283 located.

284 c. Service for segments of a channel
285 between two (2) customer channel termination points located in
286 different jurisdictions and which segments of a channel are
287 separately charged is sourced fifty percent (50%) in each level of
288 jurisdiction in which the customer channel termination points are
289 located.

290 d. Service for segments of a channel
291 located in more than one (1) jurisdiction or levels of
292 jurisdiction and which segments are not separately billed is



293 sourced in each jurisdiction based on the percentage determined by
294 dividing the number of customer channel termination points in such
295 jurisdiction by the total number of customer channel termination
296 points.

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

299 (vi) For purposes of subparagraph (v) of this
300 paragraph (e):

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

305 2. "Call-by-call basis" means any method of
306 charging for telecommunications services where the price is
307 measured by individual calls.

308 3. "Communications channel" means a physical
309 or virtual path of communications over which signals are
310 transmitted between or among customer channel termination points.

311 4. "Customer" means the person or entity that
312 contracts with the seller of telecommunications services. If the
313 end user of telecommunications services is not the contracting
314 party, the end user of the telecommunications service is the
315 customer of the telecommunications service. Customer does not
316 include a reseller of telecommunications service or for mobile
317 telecommunications service of a serving carrier under an agreement



318 to serve the customer outside the home service provider's licensed
319 service area.

320 5. "Customer channel termination point" means
321 the location where the customer either inputs or receives the
322 communications.

323 6. "End user" means the person who utilizes
324 the telecommunications service. In the case of an entity, "end
325 user" means the individual who utilizes the service on behalf of
326 the entity.

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

330 8. "Mobile telecommunications service" has
331 the meaning ascribed to such term in Section 124(7) of Public Law
332 106-252 (Mobile Telecommunications Sourcing Act).

333 9. "Place of primary use" means the street
334 address representative of where the customer's use of the
335 telecommunications service primarily occurs, which must be the
336 residential street address or the primary business street address
337 of the customer. In the case of mobile telecommunications
338 services, the place of primary use must be within the licensed
339 service area of the home service provider.

340 10. "Post-paid calling service" means the
341 telecommunications service obtained by making a payment on a
342 call-by-call basis either through the use of a credit card or



343 payment mechanism such as a bank card, travel card, credit card or
344 debit card, or by charge made to a telephone number which is not
345 associated with the origination or termination of the
346 telecommunications service. A post-paid calling service includes
347 a telecommunications service, except a prepaid wireless calling
348 service that would be a prepaid calling service except it is not
349 exclusively a telecommunications service.

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

356 12. "Prepaid wireless calling service" means
357 a telecommunications service that provides the right to utilize
358 mobile wireless service as well as other nontelecommunications
359 services, including the download of digital products delivered
360 electronically, content and ancillary service, which must be paid
361 for in advance that is sold in predetermined units or dollars of
362 which the number declines with use in a known amount.

363 13. "Private communication service" means a
364 telecommunications service that entitles the customer to exclusive
365 or priority use of a communications channel or group of channels
366 between or among termination points, regardless of the manner in
367 which such channel or channels are connected, and includes



368 switching capacity, extension lines, stations and any other
369 associated services that are provided in connection with the use
370 of such channel or channels.

371 14. "Service address" means:

372 a. The location of the
373 telecommunications equipment to which a customer's call is charged
374 and from which the call originates or terminates, regardless of
375 where the call is billed or paid.

376 b. If the location in subitem a of this
377 item 14 is not known, the origination point of the signal of the
378 telecommunications services first identified by either the
379 seller's telecommunications system or in information received by
380 the seller from its service provider, where the system used to
381 transport such signals is not that of the seller.

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

385 (vii) 1. For purposes of this subparagraph (vii),
386 "bundled transaction" means a transaction that consists of
387 distinct and identifiable properties or services which are sold
388 for a single nonitemized price but which are treated differently
389 for tax purposes.

390 2. In the case of a bundled transaction that
391 includes telecommunications services, ancillary services, Internet
392 access, or audio or video programming services taxed under this



393 chapter in which the price of the bundled transaction is
394 attributable to properties or services that are taxable and
395 nontaxable, the portion of the price that is attributable to any
396 nontaxable property or service shall be subject to the tax unless
397 the provider can reasonably identify that portion from its books
398 and records kept in the regular course of business.

399 3. In the case of a bundled transaction that
400 includes telecommunications services, ancillary services, Internet
401 access, audio or video programming services subject to tax under
402 this chapter in which the price is attributable to properties or
403 services that are subject to the tax but the tax revenue from the
404 different properties or services are dedicated to different funds
405 or purposes, the provider shall allocate the price among the
406 properties or services:

407 a. By reasonably identifying the portion
408 of the price attributable to each of the properties and services
409 from its books and records kept in the regular course of business;
410 or

411 b. Based on a reasonable allocation
412 methodology approved by the department.

413 4. This subparagraph (vii) shall not create a
414 right of action for a customer to require that the provider or the
415 department, for purposes of determining the amount of tax
416 applicable to a bundled transaction, allocate the price to the
417 different portions of the transaction in order to minimize the



418 amount of tax charged to the customer. A customer shall not be
419 entitled to rely on the fact that a portion of the price is
420 attributable to properties or services not subject to tax unless
421 the provider elects, after receiving a written request from the
422 customer in the form required by the provider, to provide
423 verifiable data based upon the provider's books and records that
424 are kept in the regular course of business that reasonably
425 identifies the portion of the price attributable to the properties
426 or services not subject to the tax.

427 (2) Persons making sales to consumers of electricity,
428 current, power, natural gas, liquefied petroleum gas or other fuel
429 for residential heating, lighting or other residential
430 noncommercial or nonagricultural use or sales of potable water for
431 residential, noncommercial or nonagricultural use shall indicate
432 on each statement rendered to customers that such charges are
433 exempt from sales taxes.

434 (3) There is hereby levied, assessed and shall be paid on
435 transportation charges on shipments moving between points within
436 this state when paid directly by the consumer, a tax equal to the
437 rate applicable to the sale of the property being transported.
438 Such tax shall be reported and paid directly to the Department of
439 Revenue by the consumer.

440 **SECTION 2.** Nothing in this act shall affect or defeat any
441 claim, assessment, appeal, suit, right or cause of action for
442 taxes due or accrued under the sales tax laws before the date on



443 which this act becomes effective, whether such claims,
444 assessments, appeals, suits or actions have been begun before the
445 date on which this act becomes effective or are begun thereafter;
446 and the provisions of the sales tax laws are expressly continued
447 in full force, effect and operation for the purpose of the
448 assessment, collection and enrollment of liens for any taxes due
449 or accrued and the execution of any warrant under such laws before
450 the date on which this act becomes effective, and for the
451 imposition of any penalties, forfeitures or claims for failure to
452 comply with such laws.

453 **SECTION 3.** This act shall take effect and be in force from and
454 after July 1, 2013.

