By: Senator(s) Bryan, Brown

To: Finance

SENATE BILL NO. 3079

AN ACT TO AMEND SECTION 27-65-19, MISSISSIPPI CODE OF 1972, TO LIMIT THE AMOUNT OF THE SALES TAX LEVIED UPON THE SALE OR USE OF NATURAL GAS BY MANUFACTURERS, CUSTOM PROCESSORS, CERTAIN TECHNOLOGY INTENSIVE ENTERPRISES OR PUBLIC SERVICE COMPANIES FOR INDUSTRIAL PURPOSES; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

(e) Upon every person operating a telegraph or telephone business for the transmission of messages or conversations between points within this state, there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross income of such business, with no deduction or allowance for any part of an intrastate rate charge because of routing across a state line. Charges by one telecommunications provider to another telecommunications provider holding a permit issued under Section 27-65-27 for services that are resold by such other telecommunications provider, including, but not limited to, access charges, shall not be subject to the tax levied pursuant to this paragraph (e). However, any sale of a prepaid telephone calling card or prepaid authorization number, or both, shall be deemed to be the sale of tangible personal property subject only to such taxes imposed by law on the sale of tangible personal property. If the sale of a prepaid telephone calling card or prepaid authorization number does not take place at the vendor's place of business, it shall be conclusively determined to take place at the customer's shipping address. The reauthorization of a prepaid telephone calling card or a prepaid authorization number shall be conclusively determined to take place at the customer's billing address. Except for the provisions governing the sale of a prepaid telephone calling card or prepaid authorization number, this paragraph (e) shall not apply to persons providing mobile telecommunications services that are taxed pursuant to paragraph (g) of this section.

(f) Upon every person operating a telegraph or telecommunications business for the transmission of messages or conversations originating in this state or terminating in this state via interstate telecommunications, which are charged to the customer's service address in this state, regardless of where such amount is billed or paid, there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross income received by such business from such interstate telecommunications. However, a person, upon proof that he has paid a tax in another state on such event, shall be allowed a credit against the tax imposed in this paragraph (f) on interstate telecommunications charges to the extent that the amount of such tax is properly due and actually paid in such other state and to the extent that the rate of sales tax imposed by and paid to such other state does not exceed the rate of sales tax imposed by this paragraph (f). Charges by one telecommunications provider to another telecommunications provider holding a permit issued under Section 27-65-27 for services that are resold by such other telecommunications provider, including, but not limited to, access charges, shall not be subject to the tax levied pursuant to this paragraph (f). This paragraph (f) shall not apply to persons providing mobile telecommunications services that are taxed pursuant to paragraph (g) of this subsection.

(g) (i) Upon every person providing mobile telecommunications services in this state there is hereby levied, assessed and shall be collected:

1. A tax equal to seven percent (7%) of the gross income received on such services from all charges for transmission of messages or conversations between points within any single state as they shall be construed to be within this state; and

2. A tax equal to seven percent (7%) on the gross income received from all charges for services that originate in one state and terminate in any other state.

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

(ii) Subject to the provisions of 4 USCS 116(c), the tax levied by this paragraph (g) shall apply only to those charges for mobile telecommunications services subject to tax which are deemed to be provided to a customer by a home service provider pursuant to 4 USCS 117(a), if the customer's place of primary use is located within this state.

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

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

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

(iv) For purposes of this paragraph (g):

1. "Place of primary use" means the street address representative of where the customer's use of mobile telecommunications services primarily occurs, which shall be either the residential street address of the customer or the primary business street address of the customer.

2. "Customer" means the person or entity that contracts with the home service provider for mobile telecommunications services. For determining the place of primary use, in those instances in which the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications services shall be deemed the customer. The term "customer" shall not include a reseller of mobile telecommunications service, or a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

3. "Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(h) (i) For purposes of this paragraph (h), "bundled transaction" means a transaction that consists of distinct and identifiable properties or services which are sold for a single nonitemized price but which are treated differently for tax purposes.

(ii) In the case of a bundled transaction that includes telecommunications services taxed under this section in which the price of the bundled transaction is attributable to properties or services that are taxable and nontaxable, the portion of the price that is attributable to any nontaxable property or service shall be subject to the tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business.

(iii) In the case of a bundled transaction that includes telecommunications services subject to tax under this section in which the price is attributable to properties or services that are subject to the tax but the tax revenue from the different properties or services are dedicated to different funds or purposes, the provider shall allocate the price among the properties or services:

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

2. Based on a reasonable allocation methodology approved by the commission.

(iv) This paragraph (h) shall not create a right of action for a customer to require that the provider or the commission, for purposes of determining the amount of tax applicable to a bundled transaction, allocate the price to the different portions of the transaction in order to minimize the amount of tax charged to the customer. A customer shall not be entitled to rely on the fact that a portion of the price is attributable to properties or services not subject to tax unless the provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the provider's books and records that are kept in the regular course of business that reasonably identifies the portion of the price attributable to the properties or services not subject to the tax.

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

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

SECTION 2. This act shall take effect and be in force from and after July 1, 2006.

ST: Sales tax; limit amount levied on natural gas sold to certain businesses.