

By: Representative Upshaw (By Request)

To: Ways and Means

HOUSE BILL NO. 363

1 AN ACT TO AMEND SECTION 27-67-4, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT A PERSON DOING BUSINESS IN THIS STATE WHO MAKES A  
3 REMOTE SALE IS SUBJECT TO THE POWER OF THIS STATE TO LEVY AND  
4 COLLECT THE USE TAX WHEN THE PERSON SOLICITS OR TRANSACTS BUSINESS  
5 IN THIS STATE BY EMPLOYEES, INDEPENDENT CONTRACTORS, AGENTS OR  
6 OTHER REPRESENTATIVES; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 27-67-4, Mississippi Code of 1972, is  
9 amended as follows:

10 27-67-4. (1) For purposes of this article, a "remote sale"  
11 is a sale of tangible personal property or specified digital  
12 products, ordered by mail or other means as described in  
13 subsection (2)(e), to a purchaser who is in this state at the time  
14 the order is remitted, from a person who receives the order in  
15 another state of the United States, or in a commonwealth,  
16 territory or other area under the jurisdiction of the United  
17 States, and which person transports the property or products or  
18 causes the property or products to be transported, whether or not  
19 by mail, from any jurisdiction of the United States, including  
20 this state, to the purchaser in this state who ordered the  
21 property or products or to another person in this state for whom  
22 the purchaser ordered the property. For purposes of this  
23 definition, it will be presumed that every purchaser resident in  
24 this state who remits an order shall have been in this state at  
25 the time the order was remitted.

26 (2) Every person doing business in this state who makes a  
27 remote sale is subject to the power of this state to levy and  
28 collect the tax imposed by this article when:



29           (a) The person is a corporation doing business under  
30 the laws of this state or a person domiciled in, a resident of, or  
31 a citizen of, this state;

32           (b) The person maintains retail establishments or  
33 offices in this state, whether the remote sales thus subject to  
34 taxation by this state result from or are related in any other way  
35 to the activities of such establishments or offices;

36           (c) The person solicits or transacts business in this  
37 state by employees, independent contractors, agents or other  
38 representatives, whether the remote sales thus subject to taxation  
39 by this state result from or are related in any other way to such  
40 solicitation or transaction of business. A person is presumed to  
41 be soliciting or transacting business by an independent  
42 contractor, agent, or other representative if the person enters  
43 into an agreement with a resident of this state under which the  
44 resident, for a commission or other consideration, directly or  
45 indirectly refers potential customers, whether by a link on an  
46 Internet website or otherwise, to the person. This presumption  
47 may be rebutted by proof that the resident with whom the person  
48 has an agreement did not engage in any solicitation in the state  
49 on behalf of the person that would satisfy the nexus requirement  
50 of the United States Constitution;

51           (d) The property was delivered in this state in  
52 fulfillment of a sales contract that was entered into in this  
53 state, in accordance with applicable conflict of laws rules, when  
54 a purchaser in this state accepted an offer by ordering the  
55 property;

56           (e) The person, by purposefully or systematically  
57 exploiting the consumer market provided by this state by any  
58 media-assisted, media-facilitated or media-solicited means,  
59 including, but not limited to, direct mail advertising,  
60 unsolicited distribution of catalogues, computer-assisted  
61 shopping, television, radio or other electronic media, or magazine



62 or newspaper advertisements or other media, creates nexus with  
63 this state;

64 (f) Through compact or reciprocity with another  
65 jurisdiction of the United States, that jurisdiction uses its  
66 taxing power and its jurisdiction over the retailer in support of  
67 this state's taxing power; or

68 (g) The person consents, expressly or by implication,  
69 to the imposition of the tax imposed by this part.

70 (3) Every person engaged in the business of making remote  
71 sales is subject to the requirements of this article for  
72 cooperation in collection of taxes and in administration of this  
73 article, except that no fee shall be imposed upon such person for  
74 carrying out any required activity.

75 (4) The tax required under this section to be collected, and  
76 any amount unreturned to a purchaser that is not tax but was  
77 collected from the purchaser under the representation that it was  
78 tax, constitute funds of the State of Mississippi from the moment  
79 of collection.

80 **SECTION 2.** This act shall take effect and be in force from  
81 and after July 1, 2011.

