

By: Representative Upshaw (By Request)

To: Ways and Means

HOUSE BILL NO. 135

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, 2012.

