

By: Representatives Lamar, Morgan,
Steverson, Jackson

To: Ways and Means

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 480

1 AN ACT TO AMEND SECTION 27-67-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF THE TERMS "PERSON DOING BUSINESS IN THIS
3 STATE" AND "PERSON MAINTAINING A PLACE OF BUSINESS WITHIN THIS
4 STATE" UNDER THE MISSISSIPPI USE TAX LAW TO INCLUDE ANY
5 OUT-OF-STATE SELLER WHO LACKS A PHYSICAL PRESENCE IN THIS STATE
6 BUT WHO IS MAKING RETAIL SALES OF TANGIBLE PERSONAL PROPERTY INTO
7 THIS STATE AND HAS A SUBSTANTIAL ECONOMIC PRESENCE IN THIS STATE
8 BY SUCH SELLER'S RETAIL SALES OF TANGIBLE PERSONAL PROPERTY SOLD
9 INTO THIS STATE EXCEEDING \$250,000.00 BASED ON THE IMMEDIATELY
10 PRECEDING CALENDAR YEAR SALES; TO PROVIDE THAT A PORTION OF USE
11 TAX REVENUE COLLECTED FROM CERTAIN OUT-OF-STATE SELLERS SHALL BE
12 DEPOSITED INTO A SPECIAL FUND IN THE STATE TREASURY AND USED FOR
13 THE REPAIR, MAINTENANCE AND RECONSTRUCTION OF ROADS, STREETS AND
14 BRIDGES IN THE STATE; TO PROVIDE THAT A PORTION OF USE TAX REVENUE
15 COLLECTED FROM CERTAIN OUT-OF-STATE SELLERS SHALL BE DISTRIBUTED
16 TO COUNTIES AND MUNICIPALITIES FOR USE ON THE REPAIR, MAINTENANCE
17 AND RECONSTRUCTION OF ROADS, STREETS AND BRIDGES; AND FOR RELATED
18 PURPOSES.

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

20 **SECTION 1.** Section 27-67-3, Mississippi Code of 1972, is
21 amended as follows:

22 27-67-3. Whenever used in this article, the words, phrases
23 and terms shall have the meaning ascribed to them as follows:

24 (a) "Tax Commission" or "department" means the
25 Department of Revenue of the State of Mississippi.



26 (b) "Commissioner" means the Commissioner of Revenue of
27 the Department of Revenue.

28 (c) "Person" means any individual, firm, partnership,
29 joint venture, association, corporation, estate, trust, receiver,
30 syndicate or any other group or combination acting as a unit and
31 includes the plural as well as the singular in number. "Person"
32 shall also include husband or wife, or both, where joint benefits
33 are derived from the operation of a business taxed hereunder or
34 where joint benefits are derived from the use of property taxed
35 hereunder.

36 (d) "Taxpayer" means any person liable for the payment
37 of any tax hereunder, or liable for the collection and payment of
38 the tax.

39 (e) "Sale" or "purchase" means the exchange of
40 properties for money or other consideration, and the barter of
41 properties or products. Every closed transaction by which title
42 to, or possession of, tangible personal property or specified
43 digital products passes shall constitute a taxable event. A
44 transaction whereby the possession of property or products is
45 transferred but the seller retains title as security for payment
46 of the selling price shall be deemed a sale.

47 (f) "Purchase price" or "sales price" means the total
48 amount for which tangible personal property or specified digital
49 product is purchased or sold, valued in money, including
50 installation and service charges, and freight charges to the point



51 of use within this state, without any deduction for cost of
52 property or products sold, expenses or losses, or taxes of any
53 kind except those exempt by the sales tax law. "Purchase price"
54 or "sales price" shall not include cash discounts allowed and
55 taken or merchandise returned by customers when the total sales
56 price is refunded either in cash or by credit, and shall not
57 include amounts allowed for a trade-in of similar property or
58 products. "Purchase price" or "sales price" does not include
59 finance charges, carrying charges or any other addition to the
60 selling price as a result of deferred payments by the purchaser.

61 (g) "Lease" or "rent" means any agreement entered into
62 for a consideration that transfers possession or control of
63 tangible personal property or specified digital products to a
64 person for use within this state.

65 (h) "Value" means the estimated or assessed monetary
66 worth of a thing or property. The value of property or products
67 transferred into this state for sales promotion or advertising
68 shall be an amount not less than the cost paid by the transferor
69 or donor. The value of property or products which have been used
70 in another state shall be determined by its cost less straight
71 line depreciation provided that value shall never be less than
72 twenty percent (20%) of the cost or other method acceptable to the
73 commissioner. On property or products imported by the
74 manufacturer thereof for rental or lease within this state, value



75 shall be the manufactured cost of the property and freight to the
76 place of use in Mississippi.

77 (i) "Tangible personal property" means personal
78 property perceptible to the human senses or by chemical analysis,
79 as opposed to real property or intangibles. "Tangible personal
80 property" shall include printed, mimeographed, multigraphed
81 matter, or material reproduced in any other manner, and books,
82 catalogs, manuals, publications or similar documents covering the
83 services of collecting, compiling or analyzing information of any
84 kind or nature. However, reports representing the work of persons
85 such as lawyers, accountants, engineers and similar professionals
86 shall not be included. "Tangible personal property" shall also
87 include tangible advertising or sales promotion materials such as,
88 but not limited to, displays, brochures, signs, catalogs, price
89 lists, point of sale advertising materials and technical manuals.
90 Tangible personal property shall also include computer software
91 programs.

92 (j) "Person doing business in this state," "person
93 maintaining a place of business within this state," or any similar
94 term means any person having within this state an office, a
95 distribution house, a salesroom or house, a warehouse, or any
96 other place of business, or owning personal property located in
97 this state used by another person, or installing personal property
98 in this state. This definition also includes (i) any person
99 selling or taking orders for any tangible personal property,



100 either personally, by mail or through an employee representative,
101 salesman, commission agent, canvasser, solicitor or independent
102 contractor or by any other means from within the state and (ii)
103 any out-of-state seller who lacks a physical presence in this
104 state but who is making retail sales of tangible personal property
105 into this state and has a substantial economic presence in this
106 state by such seller's retail sales of tangible personal property
107 sold into this state exceeding Two Hundred Fifty Thousand Dollars
108 (\$250,000.00) based on the immediately preceding calendar year
109 sales.

110 Any person doing business under the terms of this article by
111 reason of coming under any one or more of the qualifying
112 provisions listed above shall be considered as doing business on
113 all transactions involving sales to persons within this state.

114 (k) "Use" or "consumption" means the first use or
115 intended use within this state of tangible personal property or
116 specified digital product and shall include rental or loan by
117 owners or use by lessees or other persons receiving benefits from
118 use of the property or product. "Use" or "consumption" shall
119 include the benefit realized or to be realized by persons
120 importing or causing to be imported into this state tangible
121 advertising or sales promotion materials.

122 (l) "Storage" means keeping tangible personal property
123 or specified digital product in this state for subsequent use or
124 consumption in this state.



125 (m) "Specified digital products" shall have the meaning
126 ascribed to such term in Section 27-65-26.

127 **SECTION 2.** (1) An amount equal to the use tax revenue
128 collected from taxpayers described in Section 27-67-3(j) (ii)
129 and/or voluntary taxpayers and deposited into the State General
130 Fund during the preceding fiscal year shall be allocated and
131 distributed in the manner provided in this section. For the
132 purposes of this section, the term "voluntary taxpayer" means a
133 taxpayer that does not have nexus with this state for sales tax
134 purposes but voluntarily collects and remits use tax to this state
135 on behalf of this state.

136 (2) (a) An amount equal to seventy percent (70%) of such
137 use tax revenue shall be deposited into a special fund that is
138 hereby created in the State Treasury. The fund shall be
139 maintained by the State Treasurer as a separate and special fund,
140 separate and apart from the General Fund of the state. The fund
141 shall consist of monies deposited therein as provided in this
142 paragraph (a) and monies from any other source designated for
143 deposit into such fund. Monies in the fund may be expended by the
144 Department of Transportation, upon appropriation by the
145 Legislature, for repair, maintenance and/or reconstruction of
146 roads, streets and bridges in the state. Unexpended amounts
147 remaining in the fund at the end of a fiscal year shall not lapse
148 into the State General Fund, and any interest earned or investment



149 earnings on amounts in the fund shall be deposited to the credit
150 of the fund.

151 (b) An amount equal to fifteen percent (15%) of such
152 use tax revenue shall be allocated and distributed to counties in
153 this state in the following proportions:

154 (i) One-third (1/3) shall be allocated to all
155 counties in equal shares,

156 (ii) One-third (1/3) shall be allocated to
157 counties based on the proportion that the total number of rural
158 road miles in a county bears to the total number of rural road
159 miles in all counties of the state, and

160 (iii) One-third (1/3) shall be allocated to
161 counties based on the proportion that the rural population of a
162 county bears to the total rural population in all counties of the
163 state, according to the latest federal decennial census. Funds
164 allocated to a county under this paragraph (b) shall be used for
165 repair, maintenance and/or reconstruction of roads, streets and
166 bridges in the county.

167 (c) An amount equal to fifteen percent (15%) of such
168 use tax revenue shall be allocated and distributed to
169 municipalities in the state based on the proportion that the
170 amount of sales tax revenue distributed to a municipality during
171 the preceding fiscal year under Section 27-65-75(1)(a) bears to
172 the total amount of sales tax revenue distributed to all
173 municipalities during the preceding fiscal year under Section



174 27-65-75(1)(a). Funds allocated to a municipality under this
175 paragraph (c) shall be used for repair, maintenance and/or
176 reconstruction of roads, streets and bridges in the municipality.

177 (3) The Department of Revenue shall make the distributions
178 required under this section on or before January 31, 2018, and
179 each succeeding January 31 thereafter. The distributions shall be
180 made from General Fund revenue collections for the month of
181 January.

182 **SECTION 3.** Section 2 of this act shall be codified as a
183 separate section in Chapter 67, Title 27, Mississippi Code of
184 1972.

185 **SECTION 4.** This act shall take effect and be in force from
186 and after July 1, 2017.

