

By: Representatives Lamar, Morgan, Steverson To: Ways and Means

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 DISTRIBUTED TO MUNICIPALITIES; AND FOR RELATED PURPOSES.

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

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

16 27-67-3. Whenever used in this article, the words, phrases
 17 and terms shall have the meaning ascribed to them as follows:

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

20 (b) "Commissioner" means the Commissioner of Revenue of
 21 the Department of Revenue.

22 (c) "Person" means any individual, firm, partnership,
 23 joint venture, association, corporation, estate, trust, receiver,



24 syndicate or any other group or combination acting as a unit and
25 includes the plural as well as the singular in number. "Person"
26 shall also include husband or wife, or both, where joint benefits
27 are derived from the operation of a business taxed hereunder or
28 where joint benefits are derived from the use of property taxed
29 hereunder.

30 (d) "Taxpayer" means any person liable for the payment
31 of any tax hereunder, or liable for the collection and payment of
32 the tax.

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

41 (f) "Purchase price" or "sales price" means the total
42 amount for which tangible personal property or specified digital
43 product is purchased or sold, valued in money, including
44 installation and service charges, and freight charges to the point
45 of use within this state, without any deduction for cost of
46 property or products sold, expenses or losses, or taxes of any
47 kind except those exempt by the sales tax law. "Purchase price"
48 or "sales price" shall not include cash discounts allowed and



49 taken or merchandise returned by customers when the total sales
50 price is refunded either in cash or by credit, and shall not
51 include amounts allowed for a trade-in of similar property or
52 products. "Purchase price" or "sales price" does not include
53 finance charges, carrying charges or any other addition to the
54 selling price as a result of deferred payments by the purchaser.

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

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

71 (i) "Tangible personal property" means personal
72 property perceptible to the human senses or by chemical analysis,
73 as opposed to real property or intangibles. "Tangible personal



74 property" shall include printed, mimeographed, multigraphed
75 matter, or material reproduced in any other manner, and books,
76 catalogs, manuals, publications or similar documents covering the
77 services of collecting, compiling or analyzing information of any
78 kind or nature. However, reports representing the work of persons
79 such as lawyers, accountants, engineers and similar professionals
80 shall not be included. "Tangible personal property" shall also
81 include tangible advertising or sales promotion materials such as,
82 but not limited to, displays, brochures, signs, catalogs, price
83 lists, point of sale advertising materials and technical manuals.
84 Tangible personal property shall also include computer software
85 programs.

86 (j) "Person doing business in this state," "person
87 maintaining a place of business within this state," or any similar
88 term means any person having within this state an office, a
89 distribution house, a salesroom or house, a warehouse, or any
90 other place of business, or owning personal property located in
91 this state used by another person, or installing personal property
92 in this state. This definition also includes (i) any person
93 selling or taking orders for any tangible personal property,
94 either personally, by mail or through an employee representative,
95 salesman, commission agent, canvasser, solicitor or independent
96 contractor or by any other means from within the state and (ii)
97 any out-of-state seller who lacks a physical presence in this
98 state but who is making retail sales of tangible personal property



99 into this state and has a substantial economic presence in this
100 state by such seller's retail sales of tangible personal property
101 sold into this state exceeding Two Hundred Fifty Thousand Dollars
102 (\$250,000.00) based on the immediately preceding calendar year
103 sales.

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

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

116 (l) "Storage" means keeping tangible personal property
117 or specified digital product in this state for subsequent use or
118 consumption in this state.

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

121 **SECTION 2.** (1) An amount equal to a portion of the use tax
122 revenue collected from taxpayers described in Section
123 27-67-3(j) (ii) and/or voluntary taxpayers and deposited into the



124 State General Fund shall be allocated and distributed to
125 municipalities in this state in the manner provided in subsection
126 (2) of this section. For the purposes of this section, the term
127 "voluntary taxpayer" means a taxpayer that does not have nexus
128 with this state for sales tax purposes but voluntarily collects
129 and remits use tax to this state on behalf of this state.

130 (2) (a) The Department of Revenue shall determine the total
131 amount of funds to be distributed under this section by:

132 (i) Determining the percentage of total sales tax
133 revenue collected during the preceding fiscal year under Section
134 27-65-1 et seq. that was distributed to municipalities during the
135 preceding fiscal year under Section 27-65-75(1) (a);

136 (ii) Multiplying the percentage derived under
137 subparagraph (i) of this paragraph (a) by the total amount of use
138 tax collected and remitted during the preceding month under the
139 provisions of this article by taxpayers described in Section
140 27-67-3(j) (ii) and/or voluntary taxpayers; and

141 (iii) Multiplying the product derived under
142 subparagraph (ii) of this paragraph (a) by eighteen and one-half
143 percent (18-1/2%).

144 (b) The total amount derived under paragraph (a) of
145 this subsection shall be the amount of funds distributed to
146 municipalities under this section. The department shall
147 distribute the funds among municipalities based on the proportion
148 that the amount of sales tax revenue distributed to a municipality



149 during the preceding fiscal year under Section 27-65-75(1) (a)
150 bears to the total amount of sales tax revenue distributed to all
151 municipalities during the preceding fiscal year under Section
152 27-65-75(1) (a). The department shall make the distributions on or
153 before January 31, 2018, and each succeeding January 31
154 thereafter. The distributions shall be made from General Fund
155 revenue collections for the month of January.

156 **SECTION 3.** Section 2 of this act shall be codified as a
157 separate section in Chapter 67, Title 27, Mississippi Code of
158 1972.

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

