

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.

