

By: Representatives Lamar, Gibbs (72nd)

To: Ways and Means

HOUSE BILL NO. 379

1 AN ACT TO CREATE THE MISSISSIPPI MARKETPLACE FACILITATOR ACT
2 OF 2020; TO AMEND SECTION 27-65-7, MISSISSIPPI CODE OF 1972, TO
3 REVISE THE DEFINITION OF THE TERMS "RETAILER" AND "RETAIL SALE"
4 UNDER THE MISSISSIPPI SALES TAX LAW; TO AMEND SECTION 27-65-9,
5 MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF THE TERM
6 "DOING BUSINESS" UNDER THE MISSISSIPPI SALES TAX LAW; TO AMEND
7 SECTION 27-67-3, MISSISSIPPI CODE OF 1972, TO REVISE THE
8 DEFINITION OF THE TERM "PERSON DOING BUSINESS IN THIS STATE" UNDER
9 THE MISSISSIPPI USE TAX LAW; TO DEFINE THE TERMS "MARKETPLACE
10 FACILITATOR," "MARKETPLACE SELLER" AND "REMOTE SELLER" UNDER THE
11 MISSISSIPPI USE TAX LAW; TO AMEND SECTION 27-67-11, MISSISSIPPI
12 CODE OF 1972, TO AUTHORIZE THE DEPARTMENT OF REVENUE TO AUDIT A
13 MARKETPLACE FACILITATOR SOLELY FOR SALES MADE BY MARKETPLACE
14 SELLERS AND FACILITATED BY THE MARKETPLACE FACILITATOR; TO PROVIDE
15 THAT THE DEPARTMENT OF REVENUE SHALL NOT AUDIT A MARKETPLACE
16 SELLER FOR SALES FACILITATED BY A MARKETPLACE FACILITATOR EXCEPT
17 TO THE EXTENT A MARKETPLACE FACILITATOR SEEKS RELIEF FROM
18 LIABILITY TO COLLECT AND REMIT USE TAX DUE TO INCORRECT OR
19 INSUFFICIENT INFORMATION GIVEN TO THE MARKETPLACE FACILITATOR BY
20 THE MARKETPLACE SELLER; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 27-65-7, Mississippi Code of 1972, is
23 amended as follows:

24 27-65-7. "Retailer" shall apply to a person making retail
25 sales through vending machines, by maintaining a store, or
26 operating as a transient vendor, or renting or leasing tangible
27 personal property. Retailer also includes persons who facilitate



28 the sale of tangible personal property that belongs to a third
29 party.

30 "Retail sales" shall mean and include all sales of tangible
31 personal property except those defined herein as wholesale and
32 those made to a wholesaler, jobber, manufacturer or custom
33 processor for resale or for further processing.

34 "Retail sale" shall include the value of any tangible
35 personal property manufactured or purchased at wholesale which is
36 withdrawn from the business or stock in trade and is used or
37 consumed within this state in the business or by the owner or by
38 any other person, whether or not in the regular course of business
39 or trade.

40 "Retail sale" shall also include a sale invoiced to a
41 retailer but delivered to another person who pays for the
42 merchandise upon taking possession.

43 "Retail sale" shall also include a sale made or facilitated
44 by a person regularly engaged in the sale or facilitation of sales
45 of tangible personal property.

46 **SECTION 2.** Section 27-65-9, Mississippi Code of 1972, is
47 amended as follows:

48 27-65-9. (1) "Business" shall mean and include all
49 activities or acts engaged in (personal or corporate), for benefit
50 or advantage, either direct or indirect, and not exempting
51 subactivities in connection therewith. Each of such subactivities



52 shall be considered business engaged in, taxable in the class in
53 which it falls.

54 (2) "Business" shall include activities engaged in by exempt
55 organizations or political entities in competition with privately
56 owned business subject to the provisions of this chapter; however,
57 the term "business" shall not include the following activities:

58 (a) Sales of prepaid student meal plans by public or
59 private universities, colleges and community or junior colleges;

60 (b) Sales of prepared meals by any public or private
61 school to students in kindergarten through Grade 12; and

62 (c) Retail sales of prepared meals when:

63 (i) Sold on the campus of a public or private
64 university, college or community or junior college in this state
65 to a student enrolled at such university, college or community or
66 junior college; and

67 (ii) Payment for the sale is made through the use
68 of a prepaid declining balance account or similar instrument or
69 account issued to such student by the university, college or
70 community or junior college that may be used only to purchase
71 prepared meals.

72 (3) "Business" shall include the activity or activities of a
73 person in this state performing a service under contract or
74 agreement with another person when the service performed is
75 taxable under the provisions of this chapter.



76 (4) "Doing business" shall include any person owning
77 personal property located in this state under lease or rental
78 agreement or any person installing personal property within this
79 state.

80 (5) "Doing business" shall include any person represented in
81 this state by salesmen taking or soliciting orders to be filled
82 from points outside this state for subsequent delivery of the
83 merchandise in equipment owned or leased by the seller to
84 customers located in this state.

85 (6) "Doing business" shall include any person selling or
86 facilitating the sale of tangible personal property.

87 **SECTION 3.** Section 27-67-3, Mississippi Code of 1972, is
88 amended as follows:

89 27-67-3. Whenever used in this article, the words, phrases
90 and terms shall have the meaning ascribed to them as follows:

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

93 (b) "Commissioner" means the Commissioner of Revenue of
94 the Department of Revenue.

95 (c) "Person" means any individual, firm, partnership,
96 joint venture, association, corporation, estate, trust, receiver,
97 syndicate or any other group or combination acting as a unit and
98 includes the plural as well as the singular in number. "Person"
99 shall also include husband or wife, or both, where joint benefits
100 are derived from the operation of a business taxed hereunder or



101 where joint benefits are derived from the use of property taxed
102 hereunder.

103 (d) "Taxpayer" means any person liable for the payment
104 of any tax hereunder, or liable for the collection and payment of
105 the tax.

106 (e) "Sale" or "purchase" means the exchange of
107 properties for money or other consideration, and the barter of
108 properties or products. Every closed transaction by which title
109 to, or possession of, tangible personal property or specified
110 digital products passes shall constitute a taxable event. A
111 transaction whereby the possession of property or products is
112 transferred but the seller retains title as security for payment
113 of the selling price shall be deemed a sale.

114 (f) "Purchase price" or "sales price" means the total
115 amount for which tangible personal property or specified digital
116 product is purchased or sold, valued in money, including
117 installation and service charges, and freight charges to the point
118 of use within this state, without any deduction for cost of
119 property or products sold, expenses or losses, or taxes of any
120 kind except those exempt by the sales tax law. "Purchase price"
121 or "sales price" shall not include cash discounts allowed and
122 taken or merchandise returned by customers when the total sales
123 price is refunded either in cash or by credit, and shall not
124 include amounts allowed for a trade-in of similar property or
125 products. "Purchase price" or "sales price" does not include



126 finance charges, carrying charges or any other addition to the
127 selling price as a result of deferred payments by the purchaser.

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

132 (h) "Value" means the estimated or assessed monetary
133 worth of a thing or property. The value of property or products
134 transferred into this state for sales promotion or advertising
135 shall be an amount not less than the cost paid by the transferor
136 or donor. The value of property or products which have been used
137 in another state shall be determined by its cost less straight
138 line depreciation provided that value shall never be less than
139 twenty percent (20%) of the cost or other method acceptable to the
140 commissioner. On property or products imported by the
141 manufacturer thereof for rental or lease within this state, value
142 shall be the manufactured cost of the property and freight to the
143 place of use in Mississippi.

144 (i) "Tangible personal property" means personal
145 property perceptible to the human senses or by chemical analysis,
146 as opposed to real property or intangibles. "Tangible personal
147 property" shall include printed, mimeographed, multigraphed
148 matter, or material reproduced in any other manner, and books,
149 catalogs, manuals, publications or similar documents covering the
150 services of collecting, compiling or analyzing information of any



151 kind or nature. However, reports representing the work of persons
152 such as lawyers, accountants, engineers and similar professionals
153 shall not be included. "Tangible personal property" shall also
154 include tangible advertising or sales promotion materials such as,
155 but not limited to, displays, brochures, signs, catalogs, price
156 lists, point of sale advertising materials and technical manuals.
157 Tangible personal property shall also include computer software
158 programs.

159 (j) "Person doing business in this state," "person
160 maintaining a place of business within this state," or any similar
161 term means any person having within this state an office, a
162 distribution house, a salesroom or house, a warehouse, or any
163 other place of business, or owning personal property located in
164 this state used by another person, or installing personal property
165 in this state. This definition also includes any person selling
166 or taking orders for any tangible personal property, either
167 personally, by mail or through an employee representative,
168 salesman, commission agent, canvasser, solicitor or independent
169 contractor or by any other means from within the state. "Person
170 doing business in this state" also includes any marketplace
171 facilitator, marketplace seller, or remote seller with sales that
172 exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in any
173 consecutive twelve month period. A sale made through a
174 marketplace facilitator is a sale of the marketplace facilitator
175 and not the sale of a marketplace seller for purposes of



176 determining whether a person exceeds Two Hundred Fifty Thousand
177 Dollars (\$250,000.00) in sales.

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

182 (k) "Use" or "consumption" means the first use or
183 intended use within this state of tangible personal property or
184 specified digital product and shall include rental or loan by
185 owners or use by lessees or other persons receiving benefits from
186 use of the property or product. "Use" or "consumption" shall
187 include the benefit realized or to be realized by persons
188 importing or causing to be imported into this state tangible
189 advertising or sales promotion materials.

190 (l) "Storage" means keeping tangible personal property
191 or specified digital product in this state for subsequent use or
192 consumption in this state.

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

195 (n) "Marketplace facilitator" means any person,
196 including any affiliate of the person, making retail sales who
197 owns, rents, licenses, makes available, or operates any electronic
198 or physical infrastructure, through ownership, operation, or
199 control of a digital distribution service, digital distribution
200 platform, or application store. Marketplace facilitators



201 facilitate the sale of tangible personal property, taxable
202 services, or specified digital products.

203 (o) "Marketplace seller" means a seller that makes
204 sales through any physical or electronic marketplace owned,
205 operated, or controlled by a marketplace facilitator, even if such
206 seller would not have been required to collect and remit sales tax
207 had the sale not been made through such marketplace.

208 (p) "Remote seller" means a person, other than a
209 marketplace facilitator, that does not maintain a place of
210 business in this state and that through a forum sells tangible
211 personal property, taxable services or specified digital products,
212 the sale or use of which is subject to the tax imposed by this
213 chapter.

214 **SECTION 4.** Section 27-67-11, Mississippi Code of 1972, is
215 amended as follows:

216 27-67-11. (1) Every person maintaining a place of business,
217 or doing business, in this state, shall collect the tax imposed by
218 this article from the purchaser and remit the tax to the
219 commissioner as hereinafter provided. Failure to collect the tax
220 from the purchaser shall not relieve the seller of liability for
221 payment of the tax.

222 (2) This section does not affect or impair the:

223 (a) Obligation of a purchaser in this state to remit
224 use tax on any applicable transaction in which the seller does not
225 collect and remit sales or use tax;



226 (b) Obligation of a seller, when the seller is
227 transacting business in the state and tax is collected on the
228 transaction, to remit all state and local taxes on any applicable
229 transaction in which the seller provides goods or furnishes
230 services within the state.

231 (c) Ability of a state entity to immediately collect
232 the taxes described in this section.

233 (3) The department shall audit a marketplace facilitator
234 solely for sales made by marketplace sellers and facilitated by
235 the marketplace facilitator. The department shall not audit
236 marketplace sellers for sales facilitated by a marketplace
237 facilitator except to the extent the marketplace facilitator seeks
238 relief from liability under subsection (4) of this section.

239 (4) A marketplace facilitator is relieved of liability under
240 this section for failure to collect and remit the correct amount
241 of tax under this section to the extent that the failure was due
242 to incorrect or insufficient information given to the marketplace
243 facilitator by the marketplace seller, provided that the
244 marketplace facilitator can demonstrate it made a reasonable
245 effort to obtain correct and sufficient information from the
246 marketplace seller. This subsection does not apply if the
247 marketplace facilitator and the marketplace seller are related.

248 (* * *5) Any person selling tangible personal property or
249 specified digital products that does not maintain a place of
250 business in this state may be authorized by the commissioner to



251 collect the tax from customers in Mississippi who are liable for
252 its payment, and such person shall remit the tax to the
253 commissioner in the same manner and subject to the same
254 requirements as a person maintaining a place of business or doing
255 business within this state. Such authority may be cancelled at
256 any time when, in the judgment of the commissioner, the tax can be
257 collected more effectively from the purchaser in this state. When
258 the tax has been collected from the purchaser, the seller shall be
259 liable for payment of the tax to the commissioner.

260 (* * *6) Every person required or authorized to collect the
261 tax shall add to the sales price of tangible personal property,
262 services or specified digital products the amount of the tax
263 imposed on purchaser for the use, storage, or consumption thereof,
264 and, when so added, the tax shall be a debt from the purchaser to
265 the seller until paid, and shall be collectible at law in the same
266 manner as other debts. It shall be unlawful for any person to
267 advertise, hold out, or state to the public or to any customer
268 that the tax herein imposed will be assumed or absorbed by the
269 seller or that any part thereof will be refunded. Said tax shall
270 be stated separately from the sales price on the sales invoice and
271 shown separately on the seller's records. The purchaser shall pay
272 the tax to the seller as trustee for and on account of the state.

273 **SECTION 5.** This act shall take effect and be in force from
274 and after its passage.

