MISSISSIPPI LEGISLATURE

REGULAR SESSION 2020

By: Representative Lamar

To: Ways and Means

HOUSE BILL NO. 379
(As Sent to Governor)

AN ACT TO CREATE THE MISSISSIPPI MARKETPLACE FACILITATOR ACT OF 2020; TO AMEND SECTION 27-65-7, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF THE TERMS "RETAILER" AND "RETAIL SALE" UNDER THE MISSISSIPPI SALES TAX LAW; TO AMEND SECTION 27-65-9, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF THE TERM "DOING BUSINESS" UNDER THE MISSISSIPPI SALES TAX LAW; TO AMEND SECTION 27-67-3, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF THE TERM "PERSON DOING BUSINESS IN THIS STATE" UNDER THE MISSISSIPPI USE TAX LAW; TO DEFINE THE TERMS "MARKETPLACE FACILITATOR," "MARKETPLACE SELLER" AND "REMOTE SELLER" UNDER THE MISSISSIPPI USE TAX LAW; TO AMEND SECTION 27-67-11, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE DEPARTMENT OF REVENUE TO AUDIT A MARKETPLACE FACILITATOR SOLELY FOR SALES MADE BY MARKETPLACE SELLERS AND FACILITATED BY THE MARKETPLACE FACILITATOR; TO PROVIDE THAT THE DEPARTMENT OF REVENUE SHALL NOT AUDIT A MARKETPLACE SELLER FOR SALES FACILITATED BY A MARKETPLACE FACILITATOR EXCEPT TO THE EXTENT A MARKETPLACE FACILITATOR SEEKS RELIEF FROM LIABILITY TO COLLECT AND REMIT USE TAX DUE TO INCORRECT OR INSUFFICIENT INFORMATION GIVEN TO THE MARKETPLACE FACILITATOR BY THE MARKETPLACE SELLER; TO SPECIFY THAT THE MARKETPLACE FACILITATOR AND THE MARKETPLACE SELLER ARE NOT PROHIBITED, UNDER CERTAIN CIRCUMSTANCES, FROM CONTRACTUALLY AGREEING TO HAVE THE MARKETPLACE SELLER COLLECT AND REMIT ALL APPLICABLE TAXES AND FEES; TO AMEND SECTION 27-67-31, MISSISSIPPI CODE OF 1972, TO REVISE THE AMOUNT OF STATE USE TAX REVENUE THAT IS DIVERTED TO THE LOCAL SYSTEM BRIDGE REPLACEMENT AND REHABILITATION FUND; AND FOR RELATED PURPOSES.

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

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

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27-65-7. "Retailer" shall apply to a person making retail sales through vending machines, by maintaining a store, or operating as a transient vendor, or renting or leasing tangible personal property. Retailer also includes persons who facilitate the sale of services or tangible personal property that belongs to a third party.

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

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

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

"Retail sale" shall also include a sale made or facilitated by a person regularly engaged in the sale or facilitation of sales of services or tangible personal property. "Retail sale" does not include a sale by a third-party food delivery service that delivers food from an unrelated restaurant to a customer, regardless of whether the customer orders and pays for the food.
through the delivery service or whether the delivery service adds fees or upcharges to the price of the food.

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

27-65-9. (1) "Business" shall mean and include all activities or acts engaged in (personal or corporate), for benefit or advantage, either direct or indirect, and not exempting subactivities in connection therewith. Each of such subactivities shall be considered business engaged in, taxable in the class in which it falls.

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

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

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

(c) Retail sales of prepared meals when:

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

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

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

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

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

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

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

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

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

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

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

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

(f) "Purchase price" or "sales price" means the total amount for which tangible personal property or specified digital product is purchased or sold, valued in money, including installation and service charges, and freight charges to the point
of use within this state, without any deduction for cost of property or products sold, expenses or losses, or taxes of any kind except those exempt by the sales tax law. "Purchase price" or "sales price" shall not include cash discounts allowed and taken or merchandise returned by customers when the total sales price is refunded either in cash or by credit, and shall not include amounts allowed for a trade-in of similar property or products. "Purchase price" or "sales price" does not include finance charges, carrying charges or any other addition to the selling price as a result of deferred payments by the purchaser.

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

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

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

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

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

(k) "Use" or "consumption" means the first use or intended use within this state of tangible personal property or specified digital product and shall include rental or loan by owners or use by lessees or other persons receiving benefits from use of the property or product. "Use" or "consumption" shall include the benefit realized or to be realized by persons importing or causing to be imported into this state tangible advertising or sales promotion materials.
(l) "Storage" means keeping tangible personal property or specified digital product in this state for subsequent use or consumption in this state.

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

(n) "Marketplace facilitator" means any person who facilitates a retail sale by a seller by:

   (i) Listing or advertising for sale by the retailer in any forum, tangible personal property, services or digital goods that are subject to tax under this chapter; and

   (ii) Either directly or indirectly through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the retailer regardless of whether the marketplace provider receives compensation or other consideration in exchange for its service.

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

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

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

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

(2) This section does not affect or impair the:
   (a) Obligation of a purchaser in this state to remit
   use tax on any applicable transaction in which the seller does not
   collect and remit sales or use tax;
   (b) Obligation of a seller, when the seller is
   transacting business in the state and tax is collected on the
   transaction, to remit all state and local taxes on any applicable
   transaction in which the seller provides goods or furnishes
   services within the state.
   (c) Ability of a state entity to immediately collect
   the taxes described in this section.

(3) The department shall audit a marketplace facilitator
solely for sales made by marketplace sellers and facilitated by
the marketplace facilitator. The department shall not audit
marketplace sellers for sales facilitated by a marketplace
facilitator except to the extent the marketplace facilitator seeks
relief from liability under subsection (5) of this section.

(4) A marketplace facilitator that collects and remits the
taxes imposed by this chapter shall collect taxes on sales through
its marketplace based upon the address where the tangible personal
property or specified digital products taxable under this chapter
are shipped or delivered; provided, however, that taxes on
services sold through its marketplace shall be collected as
otherwise provided.

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

(6) Nothing herein shall prohibit the marketplace
facilitator and the marketplace seller from contractually agreeing
to have the marketplace seller collect and remit all applicable
taxes and fees where the marketplace seller:

(a) Has annual United States gross sales over One
Billion Dollars ($1,000,000,000.00), including the gross sales of
any related entities, and in the case of franchised entities,
including the combined sales of all franchisees of a single franchisor;

(b) Provides evidence to the marketplace facilitator that it is registered under Section 27-65-27 or Section 27-67-9 in this state; and

(c) Notifies the department in a manner prescribed by the department that the marketplace seller will collect and remit all applicable taxes on its sales through the marketplace and is liable for failure to collect or remit applicable taxes on its sales.

(* * *7) Any person selling tangible personal property or specified digital products that does not maintain a place of business in this state may be authorized by the commissioner to collect the tax from customers in Mississippi who are liable for its payment, and such person shall remit the tax to the commissioner in the same manner and subject to the same requirements as a person maintaining a place of business or doing business within this state. Such authority may be cancelled at any time when, in the judgment of the commissioner, the tax can be collected more effectively from the purchaser in this state. When the tax has been collected from the purchaser, the seller shall be liable for payment of the tax to the commissioner.

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

SECTION 5. Section 27-67-31, Mississippi Code of 1972, is amended as follows:

27-67-31. All administrative provisions of the sales tax law, and amendments thereto, including those which fix damages, penalties and interest for failure to comply with the provisions of said sales tax law, and all other requirements and duties imposed upon taxpayer, shall apply to all persons liable for use taxes under the provisions of this article. The commissioner shall exercise all power and authority and perform all duties with respect to taxpayers under this article as are provided in said sales tax law, except where there is conflict, then the provisions of this article shall control.

The commissioner may require transportation companies to permit the examination of waybills, freight bills, or other
documents covering shipments of tangible personal property into this state.

On or before the fifteenth day of each month, the amount received from taxes, damages and interest under the provisions of this article during the preceding month shall be paid and distributed as follows:

(a) On or before July 15, 1994, through July 15, 2000, and each succeeding month thereafter, two and two hundred sixty-six one-thousandths percent (2.266%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited in the School Ad Valorem Tax Reduction Fund created pursuant to Section 37-61-35. On or before August 15, 2000, and each succeeding month thereafter, two and two hundred sixty-six one-thousandths percent (2.266%) of the total use tax revenue collected during the preceding month under the provisions of this chapter shall be deposited into the School Ad Valorem Tax Reduction Fund created under Section 37-61-35 until such time that the total amount deposited into the fund during a fiscal year equals Four Million Dollars ($4,000,000.00).

Thereafter, the amounts diverted under this paragraph (a) during the fiscal year in excess of Four Million Dollars ($4,000,000.00) shall be deposited into the Education Enhancement Fund created under Section 37-61-33 for appropriation by the Legislature as other education needs and shall not be subject to the percentage appropriation requirements set forth in Section 37-61-33.
(b) On or before July 15, 1994, and each succeeding month thereafter, nine and seventy-three one-thousandths percent (9.073%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the Education Enhancement Fund created pursuant to Section 37-61-33.

(c) On or before July 15, 1997, and on or before the fifteenth day of each succeeding month thereafter, the revenue collected under the provisions of this article imposed and levied as a result of Section 27-65-17(2) and the corresponding levy in Section 27-65-23 on the rental or lease of private carriers of passengers and light carriers of property as defined in Section 27-51-101 shall be deposited into the Motor Vehicle Ad Valorem Tax Reduction Fund created pursuant to Section 27-51-105.

(d) On or before July 15, 1997, and on or before the fifteenth day of each succeeding month thereafter and after the deposits required by paragraphs (a) and (b) of this section are made, the remaining revenue collected under the provisions of this article imposed and levied as a result of Section 27-65-17(1) and the corresponding levy in Section 27-65-23 on the rental or lease of private carriers of passengers and light carriers of property as defined in Section 27-51-101 shall be deposited into the Motor Vehicle Ad Valorem Tax Reduction Fund created pursuant to Section 27-51-105.
(e) On or before August 15, 2019, and each succeeding month thereafter through July 15, 2020, three and three-fourths percent (3-3/4%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(1). On or before August 15, 2020, and each succeeding month thereafter through July 15, 2021, seven and one-half percent (7-1/2%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(1). On or before August 15, 2021, and each succeeding month thereafter through July 15, 2022, eleven and one-fourth percent (11-1/4%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(1). On or before August 15, 2022, and each succeeding month thereafter, fifteen percent (15%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(1).

(f) On or before August 15, 2019, and each succeeding month thereafter through July 15, 2020, three and three-fourths percent (3-3/4%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(2). On or before August 15, 2020, and each succeeding month thereafter through July 15, 2021, seven and one-half percent (7-1/2%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(2). On or before August 15, 2021, and each succeeding month thereafter through July 15, 2022, eleven and one-fourth percent (11-1/4%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(2). On or before August 15, 2022, and each succeeding month thereafter through July 15, 2023, fifteen percent (15%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(2).
through July 15, 2021, seven and one-half percent (7-1/2%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(2). On or before August 15, 2021, and each succeeding month thereafter through July 15, 2022, eleven and one-fourth percent (11-1/4%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(2). On or before August 15, 2022, and each succeeding month thereafter, fifteen percent (15%) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the special fund created in Section 27-67-35(2).

(g) On or before August 15, 2019, and each succeeding month thereafter through July 15, 2020, Four Hundred Sixteen Thousand Six Hundred Sixty-six Dollars and Sixty-seven Cents ($416,666.67) or one and one-fourth percent (1-1/4%) of the total use tax revenue collected during the preceding month under the provisions of this article, whichever is the greater amount, shall be deposited into the Local System Bridge Replacement and Rehabilitation Fund created in Section 65-37-13. On or before August 15, 2020, and each succeeding month thereafter through July 15, 2021, Eight Hundred Thirty-three Thousand Three Hundred Thirty-three Dollars and Thirty-four Cents ($833,333.34) or two and one-half percent (2-1/2%) of the total use tax revenue
collected during the preceding month under the provisions of this article, whichever is the greater amount, shall be deposited into the Local System Bridge Replacement and Rehabilitation Fund created in Section 65-37-13. On or before August 15, 2021, and each succeeding month thereafter through July 15, 2022, One Million Two Hundred Fifty Thousand Dollars ($1,250,000.00) or three and three-quarters percent (3\(\frac{3}{4}\)% of the total use tax revenue collected during the preceding month under the provisions of this article, whichever is the greater amount, shall be deposited into the Local System Bridge Replacement and Rehabilitation Fund created in Section 65-37-13. On or before August 15, 2022, and each succeeding month thereafter, One Million Six Hundred Sixty-six Thousand Six Hundred Sixty-six Dollars and Sixty-seven Cents ($1,666,666.67) or five percent (5%) of the total use tax revenue collected during the preceding month under the provisions of this article, whichever is the greater amount, shall be deposited into the Local System Bridge Replacement and Rehabilitation Fund created in Section 65-37-13.

(h) On or before August 15, 2020, and each succeeding month thereafter through July 15, 2022, One Million Dollars ($1,000,000.00) of the total use tax revenue collected during the preceding month under the provisions of this article shall be deposited into the Local System Bridge Replacement and Rehabilitation Fund created in Section 65-37-13. Amounts deposited into the Local System Bridge Replacement and Rehabilitation Fund created in Section 65-37-13.
Rehabilitation Fund under this paragraph (h) shall be in addition to amounts deposited into the fund under paragraph (g) of this section.

(* * *) The remainder of the amount received from taxes, damages and interest under the provisions of this article shall be paid into the General Fund of the State Treasury by the commissioner.

SECTION 6. This act shall take effect and be in force from and after July 1, 2020.