

By: Representative Lamar

To: Ways and Means

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 968

1 AN ACT TO AMEND SECTION 27-65-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF THE TERM "TANGIBLE PERSONAL PROPERTY"
3 UNDER THE STATE SALES TAX LAW; TO DEFINE THE TERMS "COMPUTER
4 SOFTWARE", "COMPUTER SOFTWARE SERVICE" AND "COMPUTER SERVICE"
5 UNDER THE STATE SALES TAX LAW; TO AMEND SECTION 27-65-23,
6 MISSISSIPPI CODE OF 1972, TO CLARIFY THE TAXATION OF COMPUTER
7 SERVICE; TO AMEND SECTION 27-67-3, MISSISSIPPI CODE OF 1972, TO
8 REVISE THE DEFINITION OF THE TERM "TANGIBLE PERSONAL PROPERTY"
9 UNDER THE STATE USE TAX LAW; TO DEFINE THE TERM "COMPUTER
10 SOFTWARE" UNDER THE STATE USE TAX LAW; TO BRING FORWARD SECTION
11 27-65-7, MISSISSIPPI CODE OF 1972, WHICH DEFINES CERTAIN TERMS
12 UNDER THE STATE SALES TAX, FOR THE PURPOSES OF POSSIBLE AMENDMENT;
13 TO BRING FORWARD SECTION 27-65-19, MISSISSIPPI CODE OF 1972, WHICH
14 LEVIES SALES TAX ON UTILITIES, FOR THE PURPOSES OF POSSIBLE
15 AMENDMENT; TO BRING FORWARD SECTION 27-65-93, MISSISSIPPI CODE OF
16 1972, WHICH PROVIDES FOR CERTAIN DUTIES OF THE COMMISSIONER OF
17 REVENUE UNDER THE STATE SALES TAX LAW, FOR THE PURPOSES OF
18 POSSIBLE AMENDMENT; TO BRING FORWARD SECTION 27-67-5, MISSISSIPPI
19 CODE OF 1972, WHICH PROVIDES FOR THE LEVY OF USE TAX, FOR THE
20 PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 27-65-3, Mississippi Code of 1972, is
23 amended as follows:

24 27-65-3. The words, terms and phrases, when used in this
25 chapter, shall have the meanings ascribed to them herein.

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



28 (b) "Commissioner" means the Commissioner of Revenue of
29 the Department of Revenue.

30 (c) "Person" means and includes any individual, firm,
31 copartnership, joint venture, association, corporation, promoter
32 of a temporary event, estate, trust or other group or combination
33 acting as a unit, and includes the plural as well as the singular
34 in number. "Person" shall include husband or wife, or both, where
35 joint benefits are derived from the operation of a business taxed
36 hereunder. "Person" shall also include any state, county,
37 municipal or other agency or association engaging in a business
38 taxable under this chapter.

39 (d) "Tax year" or "taxable year" means either the
40 calendar year or the taxpayer's fiscal year.

41 (e) "Taxpayer" means any person liable for or having
42 paid any tax to the State of Mississippi under the provisions of
43 this chapter. A taxpayer is required to obtain a sales tax permit
44 under Section 27-65-27 before engaging in business in this state.
45 If a taxpayer fails to obtain a sales tax permit before engaging
46 in business in this state, the taxpayer shall pay the retail rate
47 on all purchases of tangible personal property and/or services in
48 this state, even if purchased for resale. Upon obtaining a sales
49 tax permit, a previously unregistered taxpayer shall file sales
50 tax returns for all tax periods during which he engaged in
51 business in this state without a sales tax permit, and report and
52 pay the sales tax accruing from his operation during this period



53 and any applicable penalties and interest. On such return, the
54 taxpayer may take a credit for any sales taxes paid during the
55 period he operated without a sales tax permit on a purchase that
56 would have constituted a wholesale sale if the taxpayer had a
57 sales tax permit at the time of the purchase and if proper
58 documentation exists to substantiate a wholesale sale. This
59 credit may also be allowed in any audit of the taxpayer. Any
60 penalties and interest owed by the taxpayer on the return or in an
61 audit for a period during which he operated without a sales tax
62 permit may be determined based on the sales tax accruing from the
63 taxpayer's operation for that period after the taking of this
64 credit.

65 (f) "Sale" or "sales" includes the barter or exchange
66 of property as well as the sale thereof for money or other
67 consideration, and every closed transaction by which the title to
68 taxable property passes shall constitute a taxable event.

69 "Sale" shall also include the passing of title to property
70 for a consideration of coupons, trading stamps or by any other
71 means when redemption is subsequent to the original sale by which
72 the coupon, stamp or other obligation was created.

73 The situs of a sale for the purpose of distributing taxes to
74 municipalities shall be the same as the location of the business
75 from which the sale is made except that:



76 (i) Retail sales along a route from a vehicle or
77 otherwise by a transient vendor shall take the situs of delivery
78 to the customer.

79 (ii) The situs of wholesale sales of tangible
80 personal property taxed at wholesale rates, the amount of which is
81 allowed as a credit against the sales tax liability of the
82 retailer, shall be the same as the location of the business of the
83 retailer receiving the credit.

84 (iii) The situs of wholesale sales of tangible
85 personal property taxed at wholesale rates, the amount of which is
86 not allowed as a credit against the sales tax liability of the
87 retailer, shall have a rural situs.

88 (iv) Income received from the renting or leasing
89 of property used for transportation purposes between cities or
90 counties shall have a rural situs.

91 (g) "Delivery charges" shall mean and include any
92 expenses incurred by a seller in acquiring merchandise for sale in
93 the regular course of business commonly known as "freight-in" or
94 "transportation costs-in." "Delivery charges" also include any
95 charges made by the seller for delivery of property sold to the
96 purchaser.

97 (h) "Gross proceeds of sales" means the value
98 proceeding or accruing from the full sale price of tangible
99 personal property, including installation charges, without any
100 deduction for delivery charges, cost of property sold, other



101 expenses or losses, or taxes of any kind except those expressly
102 exempt by this chapter.

103 "Gross proceeds of sales" includes consideration received by
104 the seller from third parties if:

105 (i) The seller actually received consideration
106 from a party other than the purchaser and the consideration is
107 directly related to a price reduction or discount on the sale;

108 (ii) The seller has an obligation to pass the
109 price reduction or discount through to the purchaser;

110 (iii) The amount of the consideration attributable
111 to the sale is fixed and determinable by the seller at the time of
112 the sale of the item to the purchaser; and

113 (iv) One (1) of the following criteria is met:

114 1. The purchaser presents a coupon,
115 certificate or other documentation to the seller to claim a price
116 reduction or discount where the coupon, certificate or
117 documentation is authorized, distributed or granted by a third
118 party with the understanding that the third party will reimburse
119 any seller to whom the coupon, certificate or documentation is
120 presented;

121 2. The purchaser identified himself or
122 herself to the seller as a member of a group or organization
123 entitled to a price reduction or discount (a "preferred customer"
124 card that is available to any patron does not constitute
125 membership in such a group); or



126 3. The price reduction or discount is
127 identified as a third-party price reduction or discount on the
128 invoice received by the purchaser or on a coupon, certificate or
129 other documentation presented by the purchaser.

130 Where a trade-in is taken as part payment on tangible
131 personal property sold, "gross proceeds of sales" shall include
132 only the difference received between the selling price of the
133 tangible personal property and the amount allowed for a trade-in
134 of property of the same kind. When the trade-in is subsequently
135 sold, the selling price thereof shall be included in "gross
136 proceeds of sales."

137 "Gross proceeds of sales" shall include the value of any
138 goods, wares, merchandise or property purchased at wholesale or
139 manufactured, and any mineral or natural resources produced, which
140 are withdrawn or used from an established business or from the
141 stock in trade for consumption or any other use in the business or
142 by the owner. However, "gross proceeds of sales" does not include
143 meals prepared by a restaurant and provided at no charge to
144 employees of the restaurant or donated to a charitable
145 organization that regularly provides food to the needy and the
146 indigent and which has been granted exemption from the federal
147 income tax as an organization described in Section 501(c)(3) of
148 the Internal Revenue Code of 1986.

149 "Gross proceeds of sales" shall not include bad check or
150 draft service charges as provided for in Section 97-19-57.



151 "Gross proceeds of sales" does not include finance charges,
152 carrying charges or any other addition to the selling price as a
153 result of deferred payments by the purchaser.

154 (i) "Gross income" means the total charges for service
155 or the total receipts (actual or accrued) derived from trades,
156 business or commerce by reason of the investment of capital in the
157 business engaged in, including the sale or rental of tangible
158 personal property, compensation for labor and services performed,
159 and including the receipts from the sales of property retained as
160 toll, without any deduction for rebates, cost of property sold,
161 cost of materials used, labor costs, interest paid, losses or any
162 expense whatever.

163 "Gross income" shall also include the cost of property given
164 as compensation when the property is consumed by a person
165 performing a taxable service for the donor.

166 However, "gross income" or "gross proceeds of sales" shall
167 not be construed to include the value of goods returned by
168 customers when the total sale price is refunded either in cash or
169 by credit, or cash discounts allowed and taken on sales. Cash
170 discounts shall not include the value of trading stamps given with
171 a sale of property.

172 (j) "Tangible personal property" means personal
173 property perceptible to the human senses or by chemical analysis
174 as opposed to real property or intangibles and shall include
175 property sold on an installed basis which may become a part of



176 real or personal property. "Tangible personal property" shall
177 also include computer software but shall not include
178 electronically stored or maintained data.

179 (k) "Installation charges" shall mean and include the
180 charge for the application of tangible personal property to real
181 or personal property without regard to whether or not it becomes a
182 part of the real property or retains its personal property
183 classification. It shall include, but not be limited to, sales in
184 place of roofing, tile, glass, carpets, drapes, fences, awnings,
185 window air-conditioning units, gasoline pumps, window guards,
186 floor coverings, carports, store fixtures, aluminum and plastic
187 siding, tombstones and similar personal property.

188 (l) "Newspaper" means a periodical which:

189 (i) Is not published primarily for advertising
190 purposes and has not contained more than seventy-five percent
191 (75%) advertising in more than one-half (1/2) of its issues during
192 any consecutive twelve-month period excluding separate advertising
193 supplements inserted into but separately identifiable from any
194 regular issue or issues;

195 (ii) Has been established and published
196 continuously for at least twelve (12) months;

197 (iii) Is regularly issued at stated intervals no
198 less frequently than once a week, bears a date of issue, and is
199 numbered consecutively; provided, however, that publication on
200 legal holidays of this state or of the United States and on



201 Saturdays and Sundays shall not be required, and failure to
202 publish not more than two (2) regular issues in any calendar year
203 shall not exclude a periodical from this definition;

204 (iv) Is issued from a known office of publication,
205 which shall be the principal public business office of the
206 newspaper and need not be the place at which the periodical is
207 printed and a newspaper shall be deemed to be "published" at the
208 place where its known office of publication is located;

209 (v) Is formed of printed sheets; provided,
210 however, that a periodical that is reproduced by the stencil,
211 mimeograph or hectograph process shall not be considered to be a
212 "newspaper"; and

213 (vi) Is originated and published for the
214 dissemination of current news and intelligence of varied, broad
215 and general public interest, announcements and notices, opinions
216 as editorials on a regular or irregular basis, and advertising and
217 miscellaneous reading matter.

218 The term "newspaper" shall include periodicals which are
219 designed primarily for free circulation or for circulation at
220 nominal rates as well as those which are designed for circulation
221 at more than a nominal rate.

222 The term "newspaper" shall not include a publication or
223 periodical which is published, sponsored by, is directly supported
224 financially by, or is published to further the interests of, or is
225 directed to, or has a circulation restricted, in whole or in part,



226 to any particular sect, denomination, labor or fraternal
227 organization or other special group or class or citizens.

228 For purposes of this paragraph, a periodical designed
229 primarily for free circulation or circulation at nominal rates
230 shall not be considered to be a newspaper unless such periodical
231 has made an application for such status to the department in the
232 manner prescribed by the department and has provided to the
233 department documentation satisfactory to the department showing
234 that such periodical meets the requirements of the definition of
235 the term "newspaper." However, if such periodical has been
236 determined to be a newspaper under action taken by the department
237 on or before April 11, 1996, such periodical shall be considered
238 to be a newspaper without the necessity of applying for such
239 status. A determination by the Department of Revenue that a
240 publication is a newspaper shall be limited to the application of
241 this chapter and shall not establish that the publication is a
242 newspaper for any other purpose.

243 (m) "MPC" or "Material Purchase Certificate" means a
244 certificate for which a person that is liable for the tax levy
245 under Section 27-65-21 can apply and obtain from the commissioner,
246 and when issued, entitles the holder to purchase materials and
247 services that are to become a component part of a structure to be
248 erected or repaired with no tax due. Any person taxable under
249 Section 27-65-21 who obtains an MPC for a project and purchases
250 materials and services in this state that are to become a



251 component part of a structure being erected or repaired in the
252 project and at any time pays sales tax on these purchases may,
253 after obtaining the MPC for the project, take a credit against his
254 sales taxes for the sales tax paid on these purchases if proper
255 documentation exists to substantiate the payment of the sales tax
256 on the purchase of component materials and services. This credit
257 may also be allowed in any audit of the taxpayer. Any penalties
258 and interest owed by the taxpayer on the return or in the audit
259 where this credit is taken may be determined based on the sales
260 tax due after the taking of this credit.

261 (n) "Computer software" shall mean any program or
262 routine, or any set of one or more programs or routines which are
263 used or intended to cause one or more computers, pieces of
264 computer-related peripheral equipment, automatic processing
265 equipment, or any combination thereof, to perform a task or set of
266 tasks. Computer software may be contained in or on tangible media
267 and may be obtained on tangible media or downloaded to tangible
268 media from the internet or other remote source. Computer software
269 does not include any program or routine provided by a business to
270 a customer to access account data free of charge or as part of a
271 service charge for services that are otherwise non-taxable
272 services, such as bank account service charges, or services
273 charges for accessing a database.

274 (o) "Computer software service" shall mean computer
275 software accessed remotely via the internet regardless of whether



276 the software resides on a server located inside or outside of
277 Mississippi.

278 (p) "Computer service" shall mean the technical design
279 and programming of computer software and includes installing,
280 configuring, debugging, modifying, testing, or troubleshooting
281 computer hardware, networks, programs, or computer software.

282 **SECTION 2.** Section 27-65-23, Mississippi Code of 1972, is
283 amended as follows:

284 27-65-23. Upon every person engaging or continuing in any of
285 the following businesses or activities there is hereby levied,
286 assessed and shall be collected a tax equal to seven percent (7%)
287 of the gross income of the business, except as otherwise provided:

288 Air-conditioning installation or repairs;

289 Automobile, motorcycle, boat or any other vehicle
290 repairing or servicing;

291 Billiards, pool or domino parlors;

292 Bowling or tenpin alleys;

293 Burglar and fire alarm systems or services;

294 Car washing - automatic, self-service, or manual;

295 Computer software * * * service and computer service;

296 Cotton compresses or cotton warehouses;

297 Custom creosoting or treating, custom planing, custom
298 sawing;

299 Custom meat processing;



300 Electricians, electrical work, wiring, all repairs or
301 installation of electrical equipment;
302 Elevator or escalator installing, repairing or
303 servicing;
304 Film developing or photo finishing;
305 Foundries, machine or general repairing;
306 Furniture repairing or upholstering;
307 Grading, excavating, ditching, dredging or landscaping;
308 Hotels (as defined in Section 41-49-3), motels, tourist
309 courts or camps, trailer parks;
310 Insulating services or repairs;
311 Jewelry or watch repairing;
312 Laundering, cleaning, pressing or dyeing;
313 Marina services;
314 Mattress renovating;
315 Office and business machine repairing;
316 Parking garages and lots;
317 Plumbing or pipe fitting;
318 Public storage warehouses (There shall be no tax levied
319 on gross income of a public storage warehouse derived from the
320 temporary storage of tangible personal property in this state
321 pending shipping or mailing of the property to another state.);
322 Refrigerating equipment repairs;
323 Radio or television installing, repairing, or servicing;



324 Renting or leasing personal property used within this
325 state;

326 Services performed in connection with geophysical
327 surveying, exploring, developing, drilling, producing,
328 distributing, or testing of oil, gas, water and other mineral
329 resources;

330 Shoe repairing;

331 Storage lockers;

332 Telephone answering or paging services;

333 Termite or pest control services;

334 Tin and sheet metal shops;

335 TV cable systems, subscription TV services, and other
336 similar activities;

337 Vulcanizing, repairing or recapping of tires or tubes;

338 Welding; and

339 Woodworking or wood-turning shops.

340 Income from services taxed herein performed for electric
341 power associations in the ordinary and necessary operation of
342 their generating or distribution systems shall be taxed at the
343 rate of one percent (1%).

344 Income from services taxed herein performed on materials for
345 use in track or track structures to a railroad whose rates are
346 fixed by the Interstate Commerce Commission or the Mississippi
347 Public Service Commission shall be taxed at the rate of three
348 percent (3%).



349 Income from renting or leasing tangible personal property
350 used within this state shall be taxed at the same rates as sales
351 of the same property.

352 Persons doing business in this state who rent transportation
353 equipment with a situs within or without the state to common,
354 contract or private commercial carriers are taxed on that part of
355 the income derived from use within this state. If specific
356 accounting is impracticable, a formula may be used with approval
357 of the commissioner.

358 A lessor may deduct from the tax computed on the rental
359 income from tangible personal property a credit for sales or use
360 tax paid to this state at the time of purchase of the specific
361 personal property being leased or rented until such credit has
362 been exhausted.

363 Charges for custom processing and repairing services may be
364 excluded from gross taxable income when the property on which the
365 service was performed is delivered to the customer in another
366 state either by common carrier or in the seller's equipment.

367 When a taxpayer performs unitary services covered by this
368 section, which are performed both in intrastate and interstate
369 commerce, the commissioner is hereby invested with authority to
370 formulate in each particular case and to fix for such taxpayer in
371 each instance formulae of apportionment which will apportion to
372 this state, for taxation, that portion of the services which are
373 performed within the State of Mississippi.



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

376 27-67-3. Whenever used in this article, the words, phrases
377 and terms shall have the meaning ascribed to them as follows:

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

380 (b) "Commissioner" means the Commissioner of Revenue of
381 the Department of Revenue.

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

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

393 (e) "Sale" or "purchase" means the exchange of
394 properties for money or other consideration, and the barter of
395 properties or products. Every closed transaction by which title
396 to, or possession of, tangible personal property or specified
397 digital products passes shall constitute a taxable event. A
398 transaction whereby the possession of property or products is



399 transferred but the seller retains title as security for payment
400 of the selling price shall be deemed a sale.

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

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

419 (h) "Value" means the estimated or assessed monetary
420 worth of a thing or property. The value of property or products
421 transferred into this state for sales promotion or advertising
422 shall be an amount not less than the cost paid by the transferor
423 or donor. The value of property or products which have been used



424 in another state shall be determined by its cost less straight
425 line depreciation provided that value shall never be less than
426 twenty percent (20%) of the cost or other method acceptable to the
427 commissioner. On property or products imported by the
428 manufacturer thereof for rental or lease within this state, value
429 shall be the manufactured cost of the property and freight to the
430 place of use in Mississippi.

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

446 (j) "Person doing business in this state," "person
447 maintaining a place of business within this state," or any similar
448 term means any person having within this state an office, a



449 distribution house, a salesroom or house, a warehouse, or any
450 other place of business, or owning personal property located in
451 this state used by another person, or installing personal property
452 in this state. This definition also includes any person selling
453 or taking orders for any tangible personal property, either
454 personally, by mail or through an employee representative,
455 salesman, commission agent, canvasser, solicitor or independent
456 contractor or by any other means from within the state. "Person
457 doing business in this state" also includes any marketplace
458 facilitator, marketplace seller, or remote seller with sales that
459 exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in any
460 consecutive twelve-month period. A sale made through a
461 marketplace facilitator is a sale of the marketplace facilitator
462 and not the sale of a marketplace seller for purposes of
463 determining whether a person exceeds Two Hundred Fifty Thousand
464 Dollars (\$250,000.00) in sales.

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

469 (k) "Use" or "consumption" means the first use or
470 intended use within this state of tangible personal property or
471 specified digital product and shall include rental or loan by
472 owners or use by lessees or other persons receiving benefits from
473 use of the property or product. "Use" or "consumption" shall



474 include the benefit realized or to be realized by persons
475 importing or causing to be imported into this state tangible
476 advertising or sales promotion materials.

477 (l) "Storage" means keeping tangible personal property
478 or specified digital product in this state for subsequent use or
479 consumption in this state.

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

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

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

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

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

497 (p) "Remote seller" means a person, other than a
498 marketplace facilitator, that does not maintain a place of



499 business in this state and that through a forum sells tangible
500 personal property, taxable services or specified digital products,
501 the sale or use of which is subject to the tax imposed by this
502 chapter.

503 (q) "Computer software" shall have the meaning ascribed
504 to such term in Section 27-65-3.

505 **SECTION 4.** Section 27-65-7, Mississippi Code of 1972, is
506 brought forward as follows:

507 27-65-7. "Retailer" shall apply to a person making retail
508 sales through vending machines, by maintaining a store, or
509 operating as a transient vendor, or renting or leasing tangible
510 personal property. Retailer also includes persons who facilitate
511 the sale of services or tangible personal property that belongs to
512 a third party.

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

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



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

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

534 **SECTION 5.** Section 27-65-19, Mississippi Code of 1972, is
535 brought forward as follows:

536 27-65-19. (1) (a) (i) Except as otherwise provided in
537 this subsection, upon every person selling to consumers,
538 electricity, current, power, potable water, steam, coal, natural
539 gas, liquefied petroleum gas or other fuel, there is hereby
540 levied, assessed and shall be collected a tax equal to seven
541 percent (7%) of the gross income of the business. Provided, gross
542 income from sales to consumers of electricity, current, power,
543 natural gas, liquefied petroleum gas or other fuel for residential
544 heating, lighting or other residential noncommercial or
545 nonagricultural use, and sales of potable water for residential,
546 noncommercial or nonagricultural use shall be excluded from
547 taxable gross income of the business. Provided further, upon



548 every such seller using electricity, current, power, potable
549 water, steam, coal, natural gas, liquefied petroleum gas or other
550 fuel for nonindustrial purposes, there is hereby levied, assessed
551 and shall be collected a tax equal to seven percent (7%) of the
552 cost or value of the product or service used.

553 (ii) Gross income from sales to a church that is
554 exempt from federal income taxation under 26 USCS Section
555 501(c)(3) of electricity, current, power, natural gas, liquefied
556 petroleum gas or other fuel for heating, lighting or other use,
557 and sales of potable water to such a church shall be excluded from
558 taxable gross income of the business if the electricity, current,
559 power, natural gas, liquefied petroleum gas or potable water is
560 utilized on property that is primarily used for religious or
561 educational purposes.

562 (b) (i) There is hereby levied, assessed and shall be
563 collected a tax equal to one and one-half percent (1-1/2%) of the
564 gross income of the business from the sale of naturally occurring
565 carbon dioxide and anthropogenic carbon dioxide lawfully injected
566 into the earth for:

567 1. Use in an enhanced oil recovery project,
568 including, but not limited to, use for cycling, repressuring or
569 lifting of oil; or

570 2. Permanent sequestration in a geological
571 formation.



572 (ii) The one and one-half percent (1-1/2%) rate
573 provided for in this subsection shall apply to electricity,
574 current, power, steam, coal, natural gas, liquefied petroleum gas
575 or other fuel that is sold to a producer of oil and gas for use
576 directly in enhanced oil recovery using carbon dioxide and/or the
577 permanent sequestration of carbon dioxide in a geological
578 formation.

579 (c) The one and one-half percent (1-1/2%) rate provided
580 for in this subsection shall not apply to sales of fuel for
581 automobiles, trucks, truck-tractors, buses, farm tractors or
582 airplanes.

583 (d) (i) Upon every person providing services in this
584 state, there is hereby levied, assessed and shall be collected:

585 1. A tax equal to seven percent (7%) of the
586 gross income received from all charges for intrastate
587 telecommunications services.

588 2. A tax equal to seven percent (7%) of the
589 gross income received from all charges for interstate
590 telecommunications services.

591 3. A tax equal to seven percent (7%) of the
592 gross income received from all charges for international
593 telecommunications services.

594 4. A tax equal to seven percent (7%) of the
595 gross income received from all charges for ancillary services.



596 5. A tax equal to seven percent (7%) of the
597 gross income received from all charges for products delivered
598 electronically, including, but not limited to, software, music,
599 games, reading materials or ring tones.

600 (ii) A person, upon proof that he has paid a tax
601 in another state on an event described in subparagraph (i) of this
602 paragraph (d), shall be allowed a credit against the tax imposed
603 in this paragraph (d) on interstate telecommunications service
604 charges to the extent that the amount of such tax is properly due
605 and actually paid in such other state and to the extent that the
606 rate of sales tax imposed by and paid in such other state does not
607 exceed the rate of sales tax imposed by this paragraph (d).

608 (iii) Charges by one (1) telecommunications
609 provider to another telecommunications provider holding a permit
610 issued under Section 27-65-27 for services that are resold by such
611 other telecommunications provider, including, but not limited to,
612 access charges, shall not be subject to the tax levied pursuant to
613 this paragraph (d).

614 (iv) For purposes of this paragraph (d):

615 1. "Telecommunications service" means the
616 electronic transmission, conveyance or routing of voice, data,
617 audio, video or any other information or signals to a point, or
618 between points. The term "telecommunications service" includes
619 such transmission, conveyance or routing in which computer
620 processing applications are used to act on the form, code or



621 protocol of the content for purposes of transmission, conveyance
622 or routing without regard to whether such service is referred to
623 as voice over Internet protocol services or is classified by the
624 Federal Communications Commission as enhanced or value added. The
625 term "telecommunications service" shall not include:

626 a. Data processing and information
627 services that allow data to be generated, acquired, stored,
628 processed or retrieved and delivered by an electronic transmission
629 to a purchaser where such purchaser's primary purpose for the
630 underlying transaction is the processed data or information;

631 b. Installation or maintenance of wiring
632 or equipment on a customer's premises;

633 c. Tangible personal property;

634 d. Advertising, including, but not
635 limited to, directory advertising;

636 e. Billing and collection services
637 provided to third parties;

638 f. Internet access service;

639 g. Radio and television audio and video
640 programming services regardless of the medium, including the
641 furnishing of transmission, conveyance and routing of such
642 services by the programming service provider. Radio and
643 television audio and video programming services shall include, but
644 not be limited to, cable service as defined in 47 USCS 522(6) and



645 audio and video programming services delivered by commercial
646 mobile radio service providers, as defined in 47 CFR 20.3;

647 h. Ancillary services; or

648 i. Digital products delivered
649 electronically, including, but not limited to, software, music,
650 video, reading materials or ring tones.

651 2. "Ancillary services" means services that
652 are associated with or incidental to the provision of
653 telecommunications services, including, but not limited to,
654 detailed telecommunications billing, directory assistance,
655 vertical service and voice mail service.

656 a. "Conference bridging" means an
657 ancillary service that links two (2) or more participants of an
658 audio or video conference call and may include the provision of a
659 telephone number. Conference bridging does not include the
660 telecommunications services used to reach the conference bridge.

661 b. "Detailed telecommunications billing
662 service" means an ancillary service of separately stating
663 information pertaining to individual calls on a customer's billing
664 statement.

665 c. "Directory assistance" means an
666 ancillary service of providing telephone number information and/or
667 address information.

668 d. "Vertical service" means an ancillary
669 service that is offered in connection with one or more



670 telecommunications services, which offers advanced calling
671 features that allow customers to identify callers and to manage
672 multiple calls and call connections, including conference bridging
673 services.

674 e. "Voice mail service" means an
675 ancillary service that enables the customer to store, send or
676 receive recorded messages. Voice mail service does not include
677 any vertical services that the customer may be required to have in
678 order to utilize the voice mail service.

679 3. "Intrastate" means telecommunications
680 service that originates in one (1) United States state or United
681 States territory or possession, and terminates in the same United
682 States state or United States territory or possession.

683 4. "Interstate" means a telecommunications
684 service that originates in one (1) United States state or United
685 States territory or possession, and terminates in a different
686 United States state or United States territory or possession.

687 5. "International" means a telecommunications
688 service that originates or terminates in the United States and
689 terminates or originates outside the United States, respectively.

690 (v) For purposes of paragraph (d), the following
691 sourcing rules shall apply:

692 1. Except for the defined telecommunications
693 services in item 3 of this subparagraph, the sales of



694 telecommunications services sold on a call-by-call basis shall be
695 sourced to:

696 a. Each level of taxing jurisdiction
697 where the call originates and terminates in that jurisdiction, or

698 b. Each level of taxing jurisdiction
699 where the call either originates or terminates and in which the
700 service address is also located.

701 2. Except for the defined telecommunications
702 services in item 3 of this subparagraph, a sale of
703 telecommunications services sold on a basis other than a
704 call-by-call basis, is sourced to the customer's place of primary
705 use.

706 3. The sale of the following
707 telecommunications services shall be sourced to each level of
708 taxing jurisdiction as follows:

709 a. A sale of mobile telecommunications
710 services other than air-to-ground radiotelephone service and
711 prepaid calling service is sourced to the customer's place of
712 primary use as required by the Mobile Telecommunication Sourcing
713 Act.

714 A. A home service provider shall be
715 responsible for obtaining and maintaining the customer's place of
716 primary use. The home service provider shall be entitled to rely
717 on the applicable residential or business street address supplied
718 by such customer, if the home service provider's reliance is in



719 good faith; and the home service provider shall be held harmless
720 from liability for any additional taxes based on a different
721 determination of the place of primary use for taxes that are
722 customarily passed on to the customer as a separate itemized
723 charge. A home service provider shall be allowed to treat the
724 address used for purposes of the tax levied by this chapter for
725 any customer under a service contract in effect on August 1, 2002,
726 as that customer's place of primary use for the remaining term of
727 such service contract or agreement, excluding any extension or
728 renewal of such service contract or agreement. Month-to-month
729 services provided after the expiration of a contract shall be
730 treated as an extension or renewal of such contract or agreement.

731 B. If the commissioner determines
732 that the address used by a home service provider as a customer's
733 place of primary use does not meet the definition of the term
734 "place of primary use" as defined in subitem a.A. of this item 3,
735 the commissioner shall give binding notice to the home service
736 provider to change the place of primary use on a prospective basis
737 from the date of notice of determination; however, the customer
738 shall have the opportunity, prior to such notice of determination,
739 to demonstrate that such address satisfies the definition.

740 C. The department has the right to
741 collect any taxes due directly from the home service provider's
742 customer that has failed to provide an address that meets the



743 definition of the term "place of primary use" which resulted in a
744 failure of tax otherwise due being remitted.

745 b. A sale of postpaid calling service is
746 sourced to the origination point of the telecommunications signal
747 as first identified by either:

748 A. The seller's telecommunications
749 system; or

750 B. Information received by the
751 seller from its service provider, where the system used to
752 transport such signals is not that of the seller.

753 c. A sale of a prepaid calling service
754 or prepaid wireless calling service shall be subject to the tax
755 imposed by this paragraph if the sale takes place in this state.
756 If the customer physically purchases a prepaid calling service or
757 prepaid wireless calling service at the vendor's place of
758 business, the sale is deemed to take place at the vendor's place
759 of business. If the customer does not physically purchase the
760 service at the vendor's place of business, the sale of a prepaid
761 calling card or prepaid wireless calling card is deemed to take
762 place at the first of the following locations that applies to the
763 sale:

764 A. The customer's shipping address,
765 if the sale involves a shipment;

766 B. The customer's billing address;



767 C. Any other address of the
768 customer that is known by the vendor; or

769 D. The address of the vendor, or
770 alternatively, in the case of a prepaid wireless calling service,
771 the location associated with the mobile telephone number.

772 4. A sale of a private communication service
773 is sourced as follows:

774 a. Service for a separate charge related
775 to a customer channel termination point is sourced to each level
776 of jurisdiction in which such customer channel termination point
777 is located.

778 b. Service where all customer
779 termination points are located entirely within one (1)
780 jurisdiction or levels of jurisdiction is sourced in such
781 jurisdiction in which the customer channel termination points are
782 located.

783 c. Service for segments of a channel
784 between two (2) customer channel termination points located in
785 different jurisdictions and which segments of a channel are
786 separately charged is sourced fifty percent (50%) in each level of
787 jurisdiction in which the customer channel termination points are
788 located.

789 d. Service for segments of a channel
790 located in more than one (1) jurisdiction or levels of
791 jurisdiction and which segments are not separately billed is



792 sourced in each jurisdiction based on the percentage determined by
793 dividing the number of customer channel termination points in such
794 jurisdiction by the total number of customer channel termination
795 points.

796 5. A sale of ancillary services is sourced to
797 the customer's place of primary use.

798 (vi) For purposes of subparagraph (v) of this
799 paragraph (d):

800 1. "Air-to-ground radiotelephone service"
801 means a radio service, as that term is defined in 47 CFR 22.99, in
802 which common carriers are authorized to offer and provide radio
803 telecommunications service for hire to subscribers in aircraft.

804 2. "Call-by-call basis" means any method of
805 charging for telecommunications services where the price is
806 measured by individual calls.

807 3. "Communications channel" means a physical
808 or virtual path of communications over which signals are
809 transmitted between or among customer channel termination points.

810 4. "Customer" means the person or entity that
811 contracts with the seller of telecommunications services. If the
812 end user of telecommunications services is not the contracting
813 party, the end user of the telecommunications service is the
814 customer of the telecommunications service. Customer does not
815 include a reseller of telecommunications service or for mobile
816 telecommunications service of a serving carrier under an agreement



817 to serve the customer outside the home service provider's licensed
818 service area.

819 5. "Customer channel termination point" means
820 the location where the customer either inputs or receives the
821 communications.

822 6. "End user" means the person who utilizes
823 the telecommunications service. In the case of an entity, "end
824 user" means the individual who utilizes the service on behalf of
825 the entity.

826 7. "Home service provider" has the meaning
827 ascribed to such term in Section 124(5) of Public Law 106-252
828 (Mobile Telecommunications Sourcing Act).

829 8. "Mobile telecommunications service" has
830 the meaning ascribed to such term in Section 124(7) of Public Law
831 106-252 (Mobile Telecommunications Sourcing Act).

832 9. "Place of primary use" means the street
833 address representative of where the customer's use of the
834 telecommunications service primarily occurs, which must be the
835 residential street address or the primary business street address
836 of the customer. In the case of mobile telecommunications
837 services, the place of primary use must be within the licensed
838 service area of the home service provider.

839 10. "Post-paid calling service" means the
840 telecommunications service obtained by making a payment on a
841 call-by-call basis either through the use of a credit card or



842 payment mechanism such as a bank card, travel card, credit card or
843 debit card, or by charge made to a telephone number which is not
844 associated with the origination or termination of the
845 telecommunications service. A post-paid calling service includes
846 a telecommunications service, except a prepaid wireless calling
847 service that would be a prepaid calling service except it is not
848 exclusively a telecommunications service.

849 11. "Prepaid calling service" means the right
850 to access exclusively telecommunications services, which must be
851 paid for in advance and which enables the origination of calls
852 using an access number or authorization code, whether manually or
853 electronically dialed, and that is sold in predetermined units or
854 dollars of which the number declines with use in a known amount.

855 12. "Prepaid wireless calling service" means
856 a telecommunications service that provides the right to utilize
857 mobile wireless service as well as other nontelecommunications
858 services, including the download of digital products delivered
859 electronically, content and ancillary service, which must be paid
860 for in advance that is sold in predetermined units or dollars of
861 which the number declines with use in a known amount.

862 13. "Private communication service" means a
863 telecommunications service that entitles the customer to exclusive
864 or priority use of a communications channel or group of channels
865 between or among termination points, regardless of the manner in
866 which such channel or channels are connected, and includes



867 switching capacity, extension lines, stations and any other
868 associated services that are provided in connection with the use
869 of such channel or channels.

870 14. "Service address" means:

871 a. The location of the
872 telecommunications equipment to which a customer's call is charged
873 and from which the call originates or terminates, regardless of
874 where the call is billed or paid.

875 b. If the location in subitem a of this
876 item 14 is not known, the origination point of the signal of the
877 telecommunications services first identified by either the
878 seller's telecommunications system or in information received by
879 the seller from its service provider, where the system used to
880 transport such signals is not that of the seller.

881 c. If the location in subitems a and b
882 of this item 14 are not known, the location of the customer's
883 place of primary use.

884 (vii) 1. For purposes of this subparagraph (vii),
885 "bundled transaction" means a transaction that consists of
886 distinct and identifiable properties or services which are sold
887 for a single nonitemized price but which are treated differently
888 for tax purposes.

889 2. In the case of a bundled transaction that
890 includes telecommunications services, ancillary services, Internet
891 access, or audio or video programming services taxed under this



892 chapter in which the price of the bundled transaction is
893 attributable to properties or services that are taxable and
894 nontaxable, the portion of the price that is attributable to any
895 nontaxable property or service shall be subject to the tax unless
896 the provider can reasonably identify that portion from its books
897 and records kept in the regular course of business.

898 3. In the case of a bundled transaction that
899 includes telecommunications services, ancillary services, Internet
900 access, audio or video programming services subject to tax under
901 this chapter in which the price is attributable to properties or
902 services that are subject to the tax but the tax revenue from the
903 different properties or services are dedicated to different funds
904 or purposes, the provider shall allocate the price among the
905 properties or services:

906 a. By reasonably identifying the portion
907 of the price attributable to each of the properties and services
908 from its books and records kept in the regular course of business;
909 or

910 b. Based on a reasonable allocation
911 methodology approved by the department.

912 4. This subparagraph (vii) shall not create a
913 right of action for a customer to require that the provider or the
914 department, for purposes of determining the amount of tax
915 applicable to a bundled transaction, allocate the price to the
916 different portions of the transaction in order to minimize the



917 amount of tax charged to the customer. A customer shall not be
918 entitled to rely on the fact that a portion of the price is
919 attributable to properties or services not subject to tax unless
920 the provider elects, after receiving a written request from the
921 customer in the form required by the provider, to provide
922 verifiable data based upon the provider's books and records that
923 are kept in the regular course of business that reasonably
924 identifies the portion of the price attributable to the properties
925 or services not subject to the tax.

926 (2) Persons making sales to consumers of electricity,
927 current, power, natural gas, liquefied petroleum gas or other fuel
928 for residential heating, lighting or other residential
929 noncommercial or nonagricultural use or sales of potable water for
930 residential, noncommercial or nonagricultural use shall indicate
931 on each statement rendered to customers that such charges are
932 exempt from sales taxes.

933 (3) There is hereby levied, assessed and shall be paid on
934 transportation charges on shipments moving between points within
935 this state when paid directly by the consumer, a tax equal to the
936 rate applicable to the sale of the property being transported.
937 Such tax shall be reported and paid directly to the Department of
938 Revenue by the consumer.

939 **SECTION 6.** Section 27-65-93, Mississippi Code of 1972, is
940 brought forward as follows:



941 27-65-93. (1) The commissioner shall, from time to time,
942 promulgate rules and regulations, not inconsistent with the
943 provisions of the sales tax law, for making returns and for the
944 ascertainment, assessment and collection of the tax imposed by the
945 sales tax law as he may deem necessary to enforce its provisions;
946 and, upon request, he shall furnish any taxpayer with a copy of
947 the rules and regulations.

948 (2) All forms, necessary for the enforcement of the sales
949 tax law, shall be prescribed, printed and furnished by the
950 commissioner.

951 (3) The commissioner may adopt rules and regulations
952 providing for the issuance of permits to manufacturers, utilities,
953 construction contractors, companies receiving bond financing
954 through the Mississippi Business Finance Corporation or the
955 Mississippi Development Authority, and other taxpayers as
956 determined by the commissioner, and the commissioner shall adopt
957 rules and regulations providing for the issuance of a permit to
958 any qualified business or industry, which is certified as such by
959 the Mississippi Development Authority pursuant to the Mississippi
960 Flexible Tax Incentive Act and awarded any mFlex tax incentive
961 amount for such qualified business's or industry's qualified
962 economic development project, certified as such by the Mississippi
963 Development Authority pursuant to the Mississippi Flexible Tax
964 Incentive Act, to purchase tangible personal property taxed under
965 Section 27-65-17, items taxed under Section 27-65-18, items taxed



966 under Section 27-65-19, services taxed under Section 27-65-23,
967 items taxed under Section 27-65-24, and items taxed under Section
968 27-65-26 without the payment to the vendor of the tax imposed by
969 the sales and use tax laws, and providing for persons to report
970 and pay the tax directly to the commissioner in instances where
971 the commissioner determines that these provisions will facilitate
972 and expedite the collection of the tax at the proper rates which
973 may be due on purchases by the permittee. Under the provisions of
974 this chapter, the vendor is relieved of collecting and remitting
975 the taxes specified hereunder and the person holding the permit
976 shall become liable for such taxes instead of the seller. The
977 full enforcement provisions of the sales tax law shall apply in
978 the collection of the tax from the permittee.

979 **SECTION 7.** Section 27-67-5, Mississippi Code of 1972, is
980 brought forward as follows:

981 27-67-5. There is hereby levied, assessed and shall be
982 collected from every person a tax for the privilege of using,
983 storing or consuming, within this state, any tangible personal
984 property or specified digital product possession of which is
985 acquired in any manner.

986 (a) The use tax hereby imposed and levied shall be
987 collected at the same rates as imposed under Section 27-65-20, and
988 Sections 27-65-17, 27-65-18, 27-65-19, 27-65-24, 27-65-25 and
989 27-65-26 computed on the purchase or sales price, or value, as
990 defined in this article.



991 (b) It shall be the duty of the tax collectors of the
992 several counties, or the commissioner, as the case may be, to
993 collect, remit and account for the tax on the use of all vehicles
994 licensed or registered by the State of Mississippi for the first
995 time, except when the Mississippi use tax was collected by an
996 authorized out-of-state dealer at the time of purchase, or when
997 the use thereof was exempt by Section 27-67-7. The tax collector
998 or the commissioner shall give to the person registering the
999 vehicle a receipt in a form prescribed and furnished by the
1000 Department of Revenue for the amount of tax collected.

1001 The tax collector or commissioner is expressly prohibited
1002 from issuing a license tag to any applicant without collecting the
1003 tax levied by this article, unless positive proof is filed,
1004 together with the application for the license tag, that the
1005 Mississippi tax has been paid, or that the sale was exempt by
1006 Section 27-67-7.

1007 Persons not engaging and continuing in business so as to be
1008 registered for payment of sales and/or use tax may pay use tax due
1009 on the first use of boats, airplanes, equipment or other tangible
1010 personal property and specified digital products to county tax
1011 collectors who are hereby authorized to accept such payments on
1012 behalf of the commissioner. Receipts for all such payments shall
1013 be given to taxpayers in a form prescribed and furnished by the
1014 Department of Revenue.



1015 County tax collectors and the commissioner shall be liable
1016 for the tax they are required hereby to collect, and taxes which
1017 are in fact collected under authority of this section; and failure
1018 to properly collect or maintain proper records shall not relieve
1019 them of liability for payment to the commissioner. Deficiencies
1020 in collection or payment shall be assessed against the tax
1021 collector or commissioner in the same manner and subject to the
1022 same penalties and provisions for appeal as are deficiencies
1023 assessed against taxpayers.

1024 A dealer authorized to collect and remit the tax to the
1025 Department of Revenue shall give to the purchaser a receipt for
1026 the payment of the tax, in a form prescribed and furnished by the
1027 commissioner, which shall serve as proof of payment to the tax
1028 collector of the county in which the license is to be issued.

1029 Each tax collector of the several counties shall, on or
1030 before the twentieth day of each month, file a report with and pay
1031 to the commissioner all funds collected under the provisions of
1032 this article, less a commission of five percent (5%) which shall
1033 be retained by the tax collector as a commission for collecting
1034 such tax and be deposited in the county general fund. The report
1035 required to be filed shall cover all collections made during the
1036 calendar month next preceding the date on which the report is due
1037 and filed.

1038 Any error in the report and remittance to the commissioner
1039 may be adjusted on a subsequent report. If the error was in the



1040 collection by the tax collector, it shall be adjusted through the
1041 tax collector with the taxpayer before credit is allowed by the
1042 commissioner.

1043 All information relating to the collection of use tax by tax
1044 collectors and such records as the commissioner may require shall
1045 be preserved in the tax collector's office for a period of three
1046 (3) years for audit by the commissioner.

1047 **SECTION 8.** This act shall take effect and be in force from
1048 and after July 1, 2023.

