

By: Representative Lamar

To: Ways and Means

HOUSE BILL NO. 968
(As Passed the House)

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 REVISE THE TYPE OF APPORTIONMENT FORMULAE THAT MAY BE
8 USED WHEN A TAXPAYER PERFORMS UNITARY SERVICES; TO AMEND SECTION
9 27-67-3, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF THE
10 TERM "TANGIBLE PERSONAL PROPERTY" UNDER THE STATE USE TAX LAW; TO
11 DEFINE THE TERM "COMPUTER SOFTWARE" UNDER THE STATE USE TAX LAW;
12 TO PROVIDE THAT A TAXPAYER THAT HAS PAID A SALES TAX IN ANOTHER
13 STATE ON COMPUTER SOFTWARE, COMPUTER SOFTWARE SERVICE OR COMPUTER
14 SERVICE THAT IS TAXABLE IN THIS STATE SHALL BE ALLOWED A CREDIT
15 AGAINST THE TAX IMPOSED IN THIS STATE ON SUCH COMPUTER SOFTWARE,
16 COMPUTER SOFTWARE SERVICE OR COMPUTER SERVICE TO THE EXTENT THAT
17 THE AMOUNT OF THE OTHER TAX IS PROPERLY DUE AND ACTUALLY PAID IN
18 THE OTHER STATE AND TO THE EXTENT THAT THE RATE OF SALES TAX
19 IMPOSED BY AND PAID IN THE OTHER STATE DOES NOT EXCEED THE RATE OF
20 SALES TAX IMPOSED IN THIS STATE; TO PROVIDE FOR THE ALLOCATION OF
21 TAXABLE AND NONTAXABLE PORTIONS OF COMPUTER SOFTWARE, COMPUTER
22 SOFTWARE SERVICE OR COMPUTER SERVICE IN BUNDLED TRANSACTIONS; TO
23 PROVIDE A METHOD FOR A TAXPAYER THAT PAID SALES OR USE TAX TO A
24 VENDOR THAT COLLECTED AND REMITTED SUCH TAXES TO THE DEPARTMENT OF
25 REVENUE TO REQUEST A REFUND FROM THE DEPARTMENT OF REVENUE FOR
26 EXCESS TAXES COLLECTED BY THE VENDOR; TO CLARIFY THAT A TAXPAYER
27 USING COMPUTER SOFTWARE, COMPUTER SOFTWARE SERVICE OR COMPUTER
28 SERVICE FROM BOTH WITHIN AND WITHOUT MISSISSIPPI, MAY APPORTION
29 THE SALES TAX OR USE TAX ON THE PURCHASE OF COMPUTER SOFTWARE,
30 COMPUTER SOFTWARE SERVICE OR COMPUTER SERVICE ACCORDING TO THE USE
31 IN MISSISSIPPI COMPARED TO THE TOTAL USE IN ALL STATES; TO BRING
32 FORWARD SECTION 27-65-7, MISSISSIPPI CODE OF 1972, WHICH DEFINES
33 CERTAIN TERMS UNDER THE STATE SALES TAX, FOR THE PURPOSES OF
34 POSSIBLE AMENDMENT; TO BRING FORWARD SECTION 27-65-19, MISSISSIPPI



35 CODE OF 1972, WHICH LEVIES SALES TAX ON UTILITIES, FOR THE
36 PURPOSES OF POSSIBLE AMENDMENT; TO BRING FORWARD SECTION 27-65-93,
37 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR CERTAIN DUTIES OF THE
38 COMMISSIONER OF REVENUE UNDER THE STATE SALES TAX LAW, FOR THE
39 PURPOSES OF POSSIBLE AMENDMENT; TO BRING FORWARD SECTION 27-67-5,
40 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE LEVY OF USE TAX,
41 FOR THE PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

43 **SECTION 1.** It is the intent of the Legislature that nothing
44 in this act shall be considered to make taxable any type of
45 transaction or activity regarding the sale or use of computer
46 software, computer software service or computer service if such
47 transaction or activity was not taxable on January 1, 2023. The
48 effect of this act is to codify the application of the law
49 providing for the taxation of transactions or activities regarding
50 the sale or use of computer software, computer software service or
51 computer service that was in effect on January 1, 2023. If there
52 is a dispute between a taxpayer and the Department of Revenue
53 regarding the taxation of any transaction or activity regarding
54 the sale or use of computer software, computer software service or
55 computer service as a result of the amendments made in this act,
56 the department, in any appeal and/or hearing under Section 27-77-1
57 et seq., Mississippi Code of 1972, shall have the burden of
58 showing that the transaction or activity that is the subject of
59 dispute was taxable on January 1, 2023. If the Department of
60 Revenue fails to show that the transaction or activity was taxable
61 on January 1, 2023, the transaction or activity shall not be
62 taxable under the amendments made in this act and the taxpayer
63 shall not be liable for tax thereon. For the purposes of this



64 section, the terms "computer software", "computer software
65 service" and "computer service" mean and have the same definitions
66 as such terms have in Section 27-65-3, Mississippi Code of 1972.

67 **SECTION 2.** Section 27-65-3, Mississippi Code of 1972, is
68 amended as follows:

69 27-65-3. The words, terms and phrases, when used in this
70 chapter, shall have the meanings ascribed to them herein.

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

73 (b) "Commissioner" means the Commissioner of Revenue of
74 the Department of Revenue.

75 (c) "Person" means and includes any individual, firm,
76 copartnership, joint venture, association, corporation, promoter
77 of a temporary event, estate, trust or other group or combination
78 acting as a unit, and includes the plural as well as the singular
79 in number. "Person" shall include husband or wife, or both, where
80 joint benefits are derived from the operation of a business taxed
81 hereunder. "Person" shall also include any state, county,
82 municipal or other agency or association engaging in a business
83 taxable under this chapter.

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

86 (e) "Taxpayer" means any person liable for or having
87 paid any tax to the State of Mississippi under the provisions of
88 this chapter. A taxpayer is required to obtain a sales tax permit



89 under Section 27-65-27 before engaging in business in this state.
90 If a taxpayer fails to obtain a sales tax permit before engaging
91 in business in this state, the taxpayer shall pay the retail rate
92 on all purchases of tangible personal property and/or services in
93 this state, even if purchased for resale. Upon obtaining a sales
94 tax permit, a previously unregistered taxpayer shall file sales
95 tax returns for all tax periods during which he engaged in
96 business in this state without a sales tax permit, and report and
97 pay the sales tax accruing from his operation during this period
98 and any applicable penalties and interest. On such return, the
99 taxpayer may take a credit for any sales taxes paid during the
100 period he operated without a sales tax permit on a purchase that
101 would have constituted a wholesale sale if the taxpayer had a
102 sales tax permit at the time of the purchase and if proper
103 documentation exists to substantiate a wholesale sale. This
104 credit may also be allowed in any audit of the taxpayer. Any
105 penalties and interest owed by the taxpayer on the return or in an
106 audit for a period during which he operated without a sales tax
107 permit may be determined based on the sales tax accruing from the
108 taxpayer's operation for that period after the taking of this
109 credit.

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



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

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

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

124 (ii) The situs of wholesale sales of tangible
125 personal property taxed at wholesale rates, the amount of which is
126 allowed as a credit against the sales tax liability of the
127 retailer, shall be the same as the location of the business of the
128 retailer receiving the credit.

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

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

136 (g) "Delivery charges" shall mean and include any
137 expenses incurred by a seller in acquiring merchandise for sale in
138 the regular course of business commonly known as "freight-in" or



139 "transportation costs-in." "Delivery charges" also include any
140 charges made by the seller for delivery of property sold to the
141 purchaser.

142 (h) "Gross proceeds of sales" means the value
143 proceeding or accruing from the full sale price of tangible
144 personal property, including installation charges, without any
145 deduction for delivery charges, cost of property sold, other
146 expenses or losses, or taxes of any kind except those expressly
147 exempt by this chapter.

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

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

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

155 (iii) The amount of the consideration attributable
156 to the sale is fixed and determinable by the seller at the time of
157 the sale of the item to the purchaser; and

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

159 1. The purchaser presents a coupon,
160 certificate or other documentation to the seller to claim a price
161 reduction or discount where the coupon, certificate or
162 documentation is authorized, distributed or granted by a third
163 party with the understanding that the third party will reimburse



164 any seller to whom the coupon, certificate or documentation is
165 presented;

166 2. The purchaser identified himself or
167 herself to the seller as a member of a group or organization
168 entitled to a price reduction or discount (a "preferred customer"
169 card that is available to any patron does not constitute
170 membership in such a group); or

171 3. The price reduction or discount is
172 identified as a third-party price reduction or discount on the
173 invoice received by the purchaser or on a coupon, certificate or
174 other documentation presented by the purchaser.

175 Where a trade-in is taken as part payment on tangible
176 personal property sold, "gross proceeds of sales" shall include
177 only the difference received between the selling price of the
178 tangible personal property and the amount allowed for a trade-in
179 of property of the same kind. When the trade-in is subsequently
180 sold, the selling price thereof shall be included in "gross
181 proceeds of sales."

182 "Gross proceeds of sales" shall include the value of any
183 goods, wares, merchandise or property purchased at wholesale or
184 manufactured, and any mineral or natural resources produced, which
185 are withdrawn or used from an established business or from the
186 stock in trade for consumption or any other use in the business or
187 by the owner. However, "gross proceeds of sales" does not include
188 meals prepared by a restaurant and provided at no charge to



189 employees of the restaurant or donated to a charitable
190 organization that regularly provides food to the needy and the
191 indigent and which has been granted exemption from the federal
192 income tax as an organization described in Section 501(c)(3) of
193 the Internal Revenue Code of 1986.

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

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

199 (i) "Gross income" means the total charges for service
200 or the total receipts (actual or accrued) derived from trades,
201 business or commerce by reason of the investment of capital in the
202 business engaged in, including the sale or rental of tangible
203 personal property, compensation for labor and services performed,
204 and including the receipts from the sales of property retained as
205 toll, without any deduction for rebates, cost of property sold,
206 cost of materials used, labor costs, interest paid, losses or any
207 expense whatever.

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

211 However, "gross income" or "gross proceeds of sales" shall
212 not be construed to include the value of goods returned by
213 customers when the total sale price is refunded either in cash or



214 by credit, or cash discounts allowed and taken on sales. Cash
215 discounts shall not include the value of trading stamps given with
216 a sale of property.

217 (j) "Tangible personal property" means personal
218 property perceptible to the human senses or by chemical analysis
219 as opposed to real property or intangibles and shall include
220 property sold on an installed basis which may become a part of
221 real or personal property. "Tangible personal property" shall
222 also include computer software but shall not include
223 electronically stored or maintained data.

224 (k) "Installation charges" shall mean and include the
225 charge for the application of tangible personal property to real
226 or personal property without regard to whether or not it becomes a
227 part of the real property or retains its personal property
228 classification. It shall include, but not be limited to, sales in
229 place of roofing, tile, glass, carpets, drapes, fences, awnings,
230 window air-conditioning units, gasoline pumps, window guards,
231 floor coverings, carports, store fixtures, aluminum and plastic
232 siding, tombstones and similar personal property.

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

234 (i) Is not published primarily for advertising
235 purposes and has not contained more than seventy-five percent
236 (75%) advertising in more than one-half (1/2) of its issues during
237 any consecutive twelve-month period excluding separate advertising



238 supplements inserted into but separately identifiable from any
239 regular issue or issues;

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

242 (iii) Is regularly issued at stated intervals no
243 less frequently than once a week, bears a date of issue, and is
244 numbered consecutively; provided, however, that publication on
245 legal holidays of this state or of the United States and on
246 Saturdays and Sundays shall not be required, and failure to
247 publish not more than two (2) regular issues in any calendar year
248 shall not exclude a periodical from this definition;

249 (iv) Is issued from a known office of publication,
250 which shall be the principal public business office of the
251 newspaper and need not be the place at which the periodical is
252 printed and a newspaper shall be deemed to be "published" at the
253 place where its known office of publication is located;

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

258 (vi) Is originated and published for the
259 dissemination of current news and intelligence of varied, broad
260 and general public interest, announcements and notices, opinions
261 as editorials on a regular or irregular basis, and advertising and
262 miscellaneous reading matter.



263 The term "newspaper" shall include periodicals which are
264 designed primarily for free circulation or for circulation at
265 nominal rates as well as those which are designed for circulation
266 at more than a nominal rate.

267 The term "newspaper" shall not include a publication or
268 periodical which is published, sponsored by, is directly supported
269 financially by, or is published to further the interests of, or is
270 directed to, or has a circulation restricted, in whole or in part,
271 to any particular sect, denomination, labor or fraternal
272 organization or other special group or class or citizens.

273 For purposes of this paragraph, a periodical designed
274 primarily for free circulation or circulation at nominal rates
275 shall not be considered to be a newspaper unless such periodical
276 has made an application for such status to the department in the
277 manner prescribed by the department and has provided to the
278 department documentation satisfactory to the department showing
279 that such periodical meets the requirements of the definition of
280 the term "newspaper." However, if such periodical has been
281 determined to be a newspaper under action taken by the department
282 on or before April 11, 1996, such periodical shall be considered
283 to be a newspaper without the necessity of applying for such
284 status. A determination by the Department of Revenue that a
285 publication is a newspaper shall be limited to the application of
286 this chapter and shall not establish that the publication is a
287 newspaper for any other purpose.



288 (m) "MPC" or "Material Purchase Certificate" means a
289 certificate for which a person that is liable for the tax levy
290 under Section 27-65-21 can apply and obtain from the commissioner,
291 and when issued, entitles the holder to purchase materials and
292 services that are to become a component part of a structure to be
293 erected or repaired with no tax due. Any person taxable under
294 Section 27-65-21 who obtains an MPC for a project and purchases
295 materials and services in this state that are to become a
296 component part of a structure being erected or repaired in the
297 project and at any time pays sales tax on these purchases may,
298 after obtaining the MPC for the project, take a credit against his
299 sales taxes for the sales tax paid on these purchases if proper
300 documentation exists to substantiate the payment of the sales tax
301 on the purchase of component materials and services. This credit
302 may also be allowed in any audit of the taxpayer. Any penalties
303 and interest owed by the taxpayer on the return or in the audit
304 where this credit is taken may be determined based on the sales
305 tax due after the taking of this credit.

306 (n) "Computer software" shall mean any program or
307 routine, or any set of one or more programs or routines which are
308 used or intended to cause one or more computers, pieces of
309 computer-related peripheral equipment, automatic processing
310 equipment, or any combination thereof, to perform a task or set of
311 tasks. Computer software may be contained in or on tangible media
312 and may be obtained on tangible media or downloaded to tangible



313 media from the internet or other remote source. Computer software
314 does not include any program or routine provided by a business to
315 a customer to access account data free of charge or as part of a
316 service charge for services that are otherwise non-taxable
317 services, such as bank account service charges, or services
318 charges for accessing a database.

319 (o) "Computer software service" shall mean computer
320 software accessed remotely via the internet regardless of whether
321 the software resides on a server located inside or outside of
322 Mississippi.

323 (p) "Computer service" shall mean the technical design
324 and programming of computer software and includes installing,
325 configuring, debugging, modifying, testing, or troubleshooting
326 computer hardware, networks, programs, or computer software.

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

329 27-65-23. Upon every person engaging or continuing in any of
330 the following businesses or activities there is hereby levied,
331 assessed and shall be collected a tax equal to seven percent (7%)
332 of the gross income of the business, except as otherwise provided:

333 Air-conditioning installation or repairs;

334 Automobile, motorcycle, boat or any other vehicle
335 repairing or servicing;

336 Billiards, pool or domino parlors;

337 Bowling or tenpin alleys;



338 Burglar and fire alarm systems or services;
339 Car washing – automatic, self-service, or manual;
340 Computer software * * * service and computer service;
341 Cotton compresses or cotton warehouses;
342 Custom creosoting or treating, custom planing, custom
343 sawing;
344 Custom meat processing;
345 Electricians, electrical work, wiring, all repairs or
346 installation of electrical equipment;
347 Elevator or escalator installing, repairing or
348 servicing;
349 Film developing or photo finishing;
350 Foundries, machine or general repairing;
351 Furniture repairing or upholstering;
352 Grading, excavating, ditching, dredging or landscaping;
353 Hotels (as defined in Section 41-49-3), motels, tourist
354 courts or camps, trailer parks;
355 Insulating services or repairs;
356 Jewelry or watch repairing;
357 Laundering, cleaning, pressing or dyeing;
358 Marina services;
359 Mattress renovating;
360 Office and business machine repairing;
361 Parking garages and lots;
362 Plumbing or pipe fitting;



363 Public storage warehouses (There shall be no tax levied
364 on gross income of a public storage warehouse derived from the
365 temporary storage of tangible personal property in this state
366 pending shipping or mailing of the property to another state.);

367 Refrigerating equipment repairs;

368 Radio or television installing, repairing, or servicing;

369 Renting or leasing personal property used within this
370 state;

371 Services performed in connection with geophysical
372 surveying, exploring, developing, drilling, producing,
373 distributing, or testing of oil, gas, water and other mineral
374 resources;

375 Shoe repairing;

376 Storage lockers;

377 Telephone answering or paging services;

378 Termite or pest control services;

379 Tin and sheet metal shops;

380 TV cable systems, subscription TV services, and other
381 similar activities;

382 Vulcanizing, repairing or recapping of tires or tubes;

383 Welding; and

384 Woodworking or woodu-turning shops.

385 Income from services taxed herein performed for electric
386 power associations in the ordinary and necessary operation of



387 their generating or distribution systems shall be taxed at the
388 rate of one percent (1%).

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

394 Income from renting or leasing tangible personal property
395 used within this state shall be taxed at the same rates as sales
396 of the same property.

397 Persons doing business in this state who rent transportation
398 equipment with a situs within or without the state to common,
399 contract or private commercial carriers are taxed on that part of
400 the income derived from use within this state. If specific
401 accounting is impracticable, a formula may be used with approval
402 of the commissioner.

403 A lessor may deduct from the tax computed on the rental
404 income from tangible personal property a credit for sales or use
405 tax paid to this state at the time of purchase of the specific
406 personal property being leased or rented until such credit has
407 been exhausted.

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



412 When a taxpayer performs unitary services covered by this
413 section, which are performed both in intrastate and interstate
414 commerce, the commissioner is hereby invested with authority to
415 formulate in each particular case and to fix for such taxpayer in
416 each instance formulae of apportionment which will apportion to
417 this state, for taxation, that portion of the services which are
418 performed within the State of Mississippi. In addition, upon the
419 request of a taxpayer, the commissioner shall provide to the
420 taxpayer a list of recognized formulae of apportionment for such
421 services and the taxpayer may elect to use any such formulae
422 instead of any formulae fixed by the commissioner. The taxpayer
423 also may propose other formulae of apportionment, which the
424 commissioner may approve or disapprove for use.

425 **SECTION 4.** Section 27-67-3, Mississippi Code of 1972, is
426 amended as follows:

427 27-67-3. Whenever used in this article, the words, phrases
428 and terms shall have the meaning ascribed to them as follows:

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

431 (b) "Commissioner" means the Commissioner of Revenue of
432 the Department of Revenue.

433 (c) "Person" means any individual, firm, partnership,
434 joint venture, association, corporation, estate, trust, receiver,
435 syndicate or any other group or combination acting as a unit and
436 includes the plural as well as the singular in number. "Person"



437 shall also include husband or wife, or both, where joint benefits
438 are derived from the operation of a business taxed hereunder or
439 where joint benefits are derived from the use of property taxed
440 hereunder.

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

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

452 (f) "Purchase price" or "sales price" means the total
453 amount for which tangible personal property or specified digital
454 product is purchased or sold, valued in money, including
455 installation and service charges, and freight charges to the point
456 of use within this state, without any deduction for cost of
457 property or products sold, expenses or losses, or taxes of any
458 kind except those exempt by the sales tax law. "Purchase price"
459 or "sales price" shall not include cash discounts allowed and
460 taken or merchandise returned by customers when the total sales
461 price is refunded either in cash or by credit, and shall not



462 include amounts allowed for a trade-in of similar property or
463 products. "Purchase price" or "sales price" does not include
464 finance charges, carrying charges or any other addition to the
465 selling price as a result of deferred payments by the purchaser.

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

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

482 (i) "Tangible personal property" means personal
483 property perceptible to the human senses or by chemical analysis,
484 as opposed to real property or intangibles. "Tangible personal
485 property" shall include printed, mimeographed, multigraphed
486 matter, or material reproduced in any other manner, and books,



487 catalogs, manuals, publications or similar documents covering the
488 services of collecting, compiling or analyzing information of any
489 kind or nature. However, reports representing the work of persons
490 such as lawyers, accountants, engineers and similar professionals
491 shall not be included. "Tangible personal property" shall also
492 include tangible advertising or sales promotion materials such as,
493 but not limited to, displays, brochures, signs, catalogs, price
494 lists, point of sale advertising materials and technical manuals.
495 Tangible personal property shall also include computer
496 software * * *.

497 (j) "Person doing business in this state," "person
498 maintaining a place of business within this state," or any similar
499 term means any person having within this state an office, a
500 distribution house, a salesroom or house, a warehouse, or any
501 other place of business, or owning personal property located in
502 this state used by another person, or installing personal property
503 in this state. This definition also includes any person selling
504 or taking orders for any tangible personal property, either
505 personally, by mail or through an employee representative,
506 salesman, commission agent, canvasser, solicitor or independent
507 contractor or by any other means from within the state. "Person
508 doing business in this state" also includes any marketplace
509 facilitator, marketplace seller, or remote seller with sales that
510 exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in any
511 consecutive twelve-month period. A sale made through a



512 marketplace facilitator is a sale of the marketplace facilitator
513 and not the sale of a marketplace seller for purposes of
514 determining whether a person exceeds Two Hundred Fifty Thousand
515 Dollars (\$250,000.00) in sales.

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

520 (k) "Use" or "consumption" means the first use or
521 intended use within this state of tangible personal property or
522 specified digital product and shall include rental or loan by
523 owners or use by lessees or other persons receiving benefits from
524 use of the property or product. "Use" or "consumption" shall
525 include the benefit realized or to be realized by persons
526 importing or causing to be imported into this state tangible
527 advertising or sales promotion materials.

528 (l) "Storage" means keeping tangible personal property
529 or specified digital product in this state for subsequent use or
530 consumption in this state.

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

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



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

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

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

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

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

556 **SECTION 5.** A taxpayer, upon proof that he has paid a sales
557 tax in another state on computer software, computer software
558 service and/or computer service that is taxable under this
559 chapter, shall be allowed a credit against the tax imposed under



560 this chapter on such computer software, computer software service
561 and/or computer service to the extent that the amount of the other
562 tax is properly due and actually paid in the other state and to
563 the extent that the rate of sales tax imposed by and paid in the
564 other state does not exceed the rate of sales tax imposed under
565 this chapter.

566 SECTION 6. (1) In the case of a bundled transaction
567 including a taxable sale of computer software, computer software
568 service and/or computer service and other taxable or nontaxable
569 properties or services in which the price of the bundled
570 transaction is attributable to properties or services that are
571 taxable and nontaxable under this chapter, the portion of the
572 price that is attributable to any nontaxable property or service
573 shall be subject to the tax imposed under this chapter unless the
574 seller can reasonably identify that portion from its books and
575 records kept in the regular course of business. The seller shall
576 allocate the price among the properties or services: (a) by
577 reasonably identifying the portion of the price attributable to
578 each of the properties and services from its books and records
579 kept in the regular course of business or (b) based on a
580 reasonable allocation methodology approved by the department. For
581 the purposes of this section, "bundled transaction" means a
582 transaction that consists of distinct and identifiable properties
583 or services which are sold for a single nonitemized price but
584 which are treated differently for tax purposes under this chapter.



585 (2) This section shall not create a right of action for a
586 purchaser to require that the seller or the department, for
587 purposes of determining the amount of tax applicable to a bundled
588 transaction, allocate the price to the different portions of the
589 transaction in order to minimize the amount of tax charged to the
590 purchaser. A purchaser shall not be entitled to rely on the fact
591 that a portion of the price is attributable to properties or
592 services not subject to tax unless the seller elects, after
593 receiving a written request from the purchaser in the form
594 required by the seller, to provide verifiable data based upon the
595 seller's books and records that are kept in the regular course of
596 business that reasonably identifies the portion of the price
597 attributable to the properties or services not subject to the tax
598 under this chapter.

599 **SECTION 7.** A taxpayer using computer software, computer
600 software service and/or computer service from both within and
601 without Mississippi, may apportion the sales tax on the purchase
602 of such computer software, computer software service and/or
603 computer service according to the use of the computer software,
604 computer software service and/or computer service in Mississippi
605 compared to the total use in all states.

606 **SECTION 8.** (1) A taxpayer that paid sales tax to a vendor
607 that collected and remitted such tax to the department may request
608 a refund from the department for excess taxes collected by the



609 vendor as provided in this section. A taxpayer may request a
610 refund from the department under this section if:

611 (a) (i) The taxpayer requested a refund from the
612 vendor on at least two (2) separate occasions and the vendor
613 failed or declined to issue the refund; and

614 (ii) The vendor attests to the following under
615 penalty of perjury on a form prescribed by the department:

616 1. The taxes were remitted to the department
617 by the vendor, including the amount and the date remitted;

618 2. The vendor has not claimed and will not
619 claim a refund of such taxes;

620 3. The vendor has not taken and will not take
621 a credit for such taxes;

622 4. The vendor's sales tax account number; and

623 5. The local jurisdiction or jurisdictions
624 for which any local sales tax included in the refund claim was
625 collected and remitted; or

626 (b) (i) The taxpayer requested a refund from the
627 vendor on at least two (2) separate occasions and the vendor
628 failed or declined to issue the refund; and

629 (ii) The taxpayer reasonably attempted but was
630 unable to obtain an attestation from the vendor as required under
631 paragraph (a)(ii) of this subsection. For the purposes
632 of this subparagraph (ii), a taxpayer who contacts the vendor in



633 writing at least twice requesting such an attestation is deemed to
634 have made a reasonable attempt to obtain the vendor's attestation.

635 (2) In order for a taxpayer to request a refund from the
636 department under this section, the amount of the refund to be
637 requested must exceed Two Thousand Five Hundred Dollars
638 (\$2,500.00).

639 **SECTION 9.** A taxpayer using computer software, computer
640 software service and/or computer service from both within and
641 without Mississippi, may apportion the use tax on the purchase of
642 such computer software, computer software service and/or computer
643 service according to the use of the computer software, computer
644 software service and/or computer service in Mississippi compared
645 to the total use in all states.

646 **SECTION 10.** (1) A taxpayer that paid use tax to a vendor
647 that collected and remitted such tax to the department may request
648 a refund from the department for excess taxes collected by the
649 vendor as provided in this section. A taxpayer may request a
650 refund from the department under this section if:

651 (a) (i) The taxpayer requested a refund from the
652 vendor on at least two (2) separate occasions and the vendor
653 failed or declined to issue the refund; and

654 (ii) The vendor attests to the following under
655 penalty of perjury on a form prescribed by the department:

656 1. The taxes were remitted to the department
657 by the vendor, including the amount and the date remitted;



658 2. The vendor has not claimed and will not
659 claim a refund of such taxes;

660 3. The vendor has not taken and will not take
661 a credit for such taxes; and

662 4. The vendor's use tax account number; or

663 (b) (i) The taxpayer requested a refund from the
664 vendor on at least two (2) separate occasions and the vendor
665 failed or declined to issue the refund; and

666 (ii) The taxpayer reasonably attempted but was
667 unable to obtain an attestation from the vendor as required under
668 paragraph (a)(ii) of this subsection. For the purposes
669 of this subparagraph (ii), a taxpayer who contacts the vendor in
670 writing at least twice requesting such an attestation is deemed to
671 have made a reasonable attempt to obtain the vendor's attestation.

672 (2) In order for a taxpayer to request a refund from the
673 department under this section, the amount of the refund to be
674 requested must exceed Two Thousand Five Hundred Dollars
675 (\$2,500.00).

676 **SECTION 11.** Section 27-65-7, Mississippi Code of 1972, is
677 brought forward as follows:

678 27-65-7. "Retailer" shall apply to a person making retail
679 sales through vending machines, by maintaining a store, or
680 operating as a transient vendor, or renting or leasing tangible
681 personal property. Retailer also includes persons who facilitate



682 the sale of services or tangible personal property that belongs to
683 a third party.

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

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

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

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

705 **SECTION 12.** Section 27-65-19, Mississippi Code of 1972, is
706 brought forward as follows:



707 27-65-19. (1) (a) (i) Except as otherwise provided in
708 this subsection, upon every person selling to consumers,
709 electricity, current, power, potable water, steam, coal, natural
710 gas, liquefied petroleum gas or other fuel, there is hereby
711 levied, assessed and shall be collected a tax equal to seven
712 percent (7%) of the gross income of the business. Provided, gross
713 income from sales to consumers of electricity, current, power,
714 natural gas, liquefied petroleum gas or other fuel for residential
715 heating, lighting or other residential noncommercial or
716 nonagricultural use, and sales of potable water for residential,
717 noncommercial or nonagricultural use shall be excluded from
718 taxable gross income of the business. Provided further, upon
719 every such seller using electricity, current, power, potable
720 water, steam, coal, natural gas, liquefied petroleum gas or other
721 fuel for nonindustrial purposes, there is hereby levied, assessed
722 and shall be collected a tax equal to seven percent (7%) of the
723 cost or value of the product or service used.

724 (ii) Gross income from sales to a church that is
725 exempt from federal income taxation under 26 USCS Section
726 501(c)(3) of electricity, current, power, natural gas, liquefied
727 petroleum gas or other fuel for heating, lighting or other use,
728 and sales of potable water to such a church shall be excluded from
729 taxable gross income of the business if the electricity, current,
730 power, natural gas, liquefied petroleum gas or potable water is



731 utilized on property that is primarily used for religious or
732 educational purposes.

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

738 1. Use in an enhanced oil recovery project,
739 including, but not limited to, use for cycling, repressuring or
740 lifting of oil; or

741 2. Permanent sequestration in a geological
742 formation.

743 (ii) The one and one-half percent (1-1/2%) rate
744 provided for in this subsection shall apply to electricity,
745 current, power, steam, coal, natural gas, liquefied petroleum gas
746 or other fuel that is sold to a producer of oil and gas for use
747 directly in enhanced oil recovery using carbon dioxide and/or the
748 permanent sequestration of carbon dioxide in a geological
749 formation.

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

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



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

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

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

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

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

771 (ii) A person, upon proof that he has paid a tax
772 in another state on an event described in subparagraph (i) of this
773 paragraph (d), shall be allowed a credit against the tax imposed
774 in this paragraph (d) on interstate telecommunications service
775 charges to the extent that the amount of such tax is properly due
776 and actually paid in such other state and to the extent that the
777 rate of sales tax imposed by and paid in such other state does not
778 exceed the rate of sales tax imposed by this paragraph (d).

779 (iii) Charges by one (1) telecommunications
780 provider to another telecommunications provider holding a permit



781 issued under Section 27-65-27 for services that are resold by such
782 other telecommunications provider, including, but not limited to,
783 access charges, shall not be subject to the tax levied pursuant to
784 this paragraph (d).

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

786 1. "Telecommunications service" means the
787 electronic transmission, conveyance or routing of voice, data,
788 audio, video or any other information or signals to a point, or
789 between points. The term "telecommunications service" includes
790 such transmission, conveyance or routing in which computer
791 processing applications are used to act on the form, code or
792 protocol of the content for purposes of transmission, conveyance
793 or routing without regard to whether such service is referred to
794 as voice over Internet protocol services or is classified by the
795 Federal Communications Commission as enhanced or value added. The
796 term "telecommunications service" shall not include:

797 a. Data processing and information
798 services that allow data to be generated, acquired, stored,
799 processed or retrieved and delivered by an electronic transmission
800 to a purchaser where such purchaser's primary purpose for the
801 underlying transaction is the processed data or information;

802 b. Installation or maintenance of wiring
803 or equipment on a customer's premises;

804 c. Tangible personal property;



805 d. Advertising, including, but not
806 limited to, directory advertising;
807 e. Billing and collection services
808 provided to third parties;
809 f. Internet access service;
810 g. Radio and television audio and video
811 programming services regardless of the medium, including the
812 furnishing of transmission, conveyance and routing of such
813 services by the programming service provider. Radio and
814 television audio and video programming services shall include, but
815 not be limited to, cable service as defined in 47 USCS 522(6) and
816 audio and video programming services delivered by commercial
817 mobile radio service providers, as defined in 47 CFR 20.3;
818 h. Ancillary services; or
819 i. Digital products delivered
820 electronically, including, but not limited to, software, music,
821 video, reading materials or ring tones.

822 2. "Ancillary services" means services that
823 are associated with or incidental to the provision of
824 telecommunications services, including, but not limited to,
825 detailed telecommunications billing, directory assistance,
826 vertical service and voice mail service.

827 a. "Conference bridging" means an
828 ancillary service that links two (2) or more participants of an
829 audio or video conference call and may include the provision of a



830 telephone number. Conference bridging does not include the
831 telecommunications services used to reach the conference bridge.

832 b. "Detailed telecommunications billing
833 service" means an ancillary service of separately stating
834 information pertaining to individual calls on a customer's billing
835 statement.

836 c. "Directory assistance" means an
837 ancillary service of providing telephone number information and/or
838 address information.

839 d. "Vertical service" means an ancillary
840 service that is offered in connection with one or more
841 telecommunications services, which offers advanced calling
842 features that allow customers to identify callers and to manage
843 multiple calls and call connections, including conference bridging
844 services.

845 e. "Voice mail service" means an
846 ancillary service that enables the customer to store, send or
847 receive recorded messages. Voice mail service does not include
848 any vertical services that the customer may be required to have in
849 order to utilize the voice mail service.

850 3. "Intrastate" means telecommunications
851 service that originates in one (1) United States state or United
852 States territory or possession, and terminates in the same United
853 States state or United States territory or possession.



854 4. "Interstate" means a telecommunications
855 service that originates in one (1) United States state or United
856 States territory or possession, and terminates in a different
857 United States state or United States territory or possession.

858 5. "International" means a telecommunications
859 service that originates or terminates in the United States and
860 terminates or originates outside the United States, respectively.

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

863 1. Except for the defined telecommunications
864 services in item 3 of this subparagraph, the sales of
865 telecommunications services sold on a call-by-call basis shall be
866 sourced to:

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

869 b. Each level of taxing jurisdiction
870 where the call either originates or terminates and in which the
871 service address is also located.

872 2. Except for the defined telecommunications
873 services in item 3 of this subparagraph, a sale of
874 telecommunications services sold on a basis other than a
875 call-by-call basis, is sourced to the customer's place of primary
876 use.



877 3. The sale of the following
878 telecommunications services shall be sourced to each level of
879 taxing jurisdiction as follows:

880 a. A sale of mobile telecommunications
881 services other than air-to-ground radiotelephone service and
882 prepaid calling service is sourced to the customer's place of
883 primary use as required by the Mobile Telecommunication Sourcing
884 Act.

885 A. A home service provider shall be
886 responsible for obtaining and maintaining the customer's place of
887 primary use. The home service provider shall be entitled to rely
888 on the applicable residential or business street address supplied
889 by such customer, if the home service provider's reliance is in
890 good faith; and the home service provider shall be held harmless
891 from liability for any additional taxes based on a different
892 determination of the place of primary use for taxes that are
893 customarily passed on to the customer as a separate itemized
894 charge. A home service provider shall be allowed to treat the
895 address used for purposes of the tax levied by this chapter for
896 any customer under a service contract in effect on August 1, 2002,
897 as that customer's place of primary use for the remaining term of
898 such service contract or agreement, excluding any extension or
899 renewal of such service contract or agreement. Month-to-month
900 services provided after the expiration of a contract shall be
901 treated as an extension or renewal of such contract or agreement.



902 B. If the commissioner determines
903 that the address used by a home service provider as a customer's
904 place of primary use does not meet the definition of the term
905 "place of primary use" as defined in subitem a.A. of this item 3,
906 the commissioner shall give binding notice to the home service
907 provider to change the place of primary use on a prospective basis
908 from the date of notice of determination; however, the customer
909 shall have the opportunity, prior to such notice of determination,
910 to demonstrate that such address satisfies the definition.

911 C. The department has the right to
912 collect any taxes due directly from the home service provider's
913 customer that has failed to provide an address that meets the
914 definition of the term "place of primary use" which resulted in a
915 failure of tax otherwise due being remitted.

916 b. A sale of postpaid calling service is
917 sourced to the origination point of the telecommunications signal
918 as first identified by either:

919 A. The seller's telecommunications
920 system; or

921 B. Information received by the
922 seller from its service provider, where the system used to
923 transport such signals is not that of the seller.

924 c. A sale of a prepaid calling service
925 or prepaid wireless calling service shall be subject to the tax
926 imposed by this paragraph if the sale takes place in this state.



927 If the customer physically purchases a prepaid calling service or
928 prepaid wireless calling service at the vendor's place of
929 business, the sale is deemed to take place at the vendor's place
930 of business. If the customer does not physically purchase the
931 service at the vendor's place of business, the sale of a prepaid
932 calling card or prepaid wireless calling card is deemed to take
933 place at the first of the following locations that applies to the
934 sale:

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

937 B. The customer's billing address;

938 C. Any other address of the
939 customer that is known by the vendor; or

940 D. The address of the vendor, or
941 alternatively, in the case of a prepaid wireless calling service,
942 the location associated with the mobile telephone number.

943 4. A sale of a private communication service
944 is sourced as follows:

945 a. Service for a separate charge related
946 to a customer channel termination point is sourced to each level
947 of jurisdiction in which such customer channel termination point
948 is located.

949 b. Service where all customer
950 termination points are located entirely within one (1)
951 jurisdiction or levels of jurisdiction is sourced in such



952 jurisdiction in which the customer channel termination points are
953 located.

954 c. Service for segments of a channel
955 between two (2) customer channel termination points located in
956 different jurisdictions and which segments of a channel are
957 separately charged is sourced fifty percent (50%) in each level of
958 jurisdiction in which the customer channel termination points are
959 located.

960 d. Service for segments of a channel
961 located in more than one (1) jurisdiction or levels of
962 jurisdiction and which segments are not separately billed is
963 sourced in each jurisdiction based on the percentage determined by
964 dividing the number of customer channel termination points in such
965 jurisdiction by the total number of customer channel termination
966 points.

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

969 (vi) For purposes of subparagraph (v) of this
970 paragraph (d):

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



975 2. "Call-by-call basis" means any method of
976 charging for telecommunications services where the price is
977 measured by individual calls.

978 3. "Communications channel" means a physical
979 or virtual path of communications over which signals are
980 transmitted between or among customer channel termination points.

981 4. "Customer" means the person or entity that
982 contracts with the seller of telecommunications services. If the
983 end user of telecommunications services is not the contracting
984 party, the end user of the telecommunications service is the
985 customer of the telecommunications service. Customer does not
986 include a reseller of telecommunications service or for mobile
987 telecommunications service of a serving carrier under an agreement
988 to serve the customer outside the home service provider's licensed
989 service area.

990 5. "Customer channel termination point" means
991 the location where the customer either inputs or receives the
992 communications.

993 6. "End user" means the person who utilizes
994 the telecommunications service. In the case of an entity, "end
995 user" means the individual who utilizes the service on behalf of
996 the entity.

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



1000 8. "Mobile telecommunications service" has
1001 the meaning ascribed to such term in Section 124(7) of Public Law
1002 106-252 (Mobile Telecommunications Sourcing Act).

1003 9. "Place of primary use" means the street
1004 address representative of where the customer's use of the
1005 telecommunications service primarily occurs, which must be the
1006 residential street address or the primary business street address
1007 of the customer. In the case of mobile telecommunications
1008 services, the place of primary use must be within the licensed
1009 service area of the home service provider.

1010 10. "Post-paid calling service" means the
1011 telecommunications service obtained by making a payment on a
1012 call-by-call basis either through the use of a credit card or
1013 payment mechanism such as a bank card, travel card, credit card or
1014 debit card, or by charge made to a telephone number which is not
1015 associated with the origination or termination of the
1016 telecommunications service. A post-paid calling service includes
1017 a telecommunications service, except a prepaid wireless calling
1018 service that would be a prepaid calling service except it is not
1019 exclusively a telecommunications service.

1020 11. "Prepaid calling service" means the right
1021 to access exclusively telecommunications services, which must be
1022 paid for in advance and which enables the origination of calls
1023 using an access number or authorization code, whether manually or



1024 electronically dialed, and that is sold in predetermined units or
1025 dollars of which the number declines with use in a known amount.

1026 12. "Prepaid wireless calling service" means
1027 a telecommunications service that provides the right to utilize
1028 mobile wireless service as well as other nontelecommunications
1029 services, including the download of digital products delivered
1030 electronically, content and ancillary service, which must be paid
1031 for in advance that is sold in predetermined units or dollars of
1032 which the number declines with use in a known amount.

1033 13. "Private communication service" means a
1034 telecommunications service that entitles the customer to exclusive
1035 or priority use of a communications channel or group of channels
1036 between or among termination points, regardless of the manner in
1037 which such channel or channels are connected, and includes
1038 switching capacity, extension lines, stations and any other
1039 associated services that are provided in connection with the use
1040 of such channel or channels.

1041 14. "Service address" means:

1042 a. The location of the
1043 telecommunications equipment to which a customer's call is charged
1044 and from which the call originates or terminates, regardless of
1045 where the call is billed or paid.

1046 b. If the location in subitem a of this
1047 item 14 is not known, the origination point of the signal of the
1048 telecommunications services first identified by either the



1049 seller's telecommunications system or in information received by
1050 the seller from its service provider, where the system used to
1051 transport such signals is not that of the seller.

1052 c. If the location in subitems a and b
1053 of this item 14 are not known, the location of the customer's
1054 place of primary use.

1055 (vii) 1. For purposes of this subparagraph (vii),
1056 "bundled transaction" means a transaction that consists of
1057 distinct and identifiable properties or services which are sold
1058 for a single nonitemized price but which are treated differently
1059 for tax purposes.

1060 2. In the case of a bundled transaction that
1061 includes telecommunications services, ancillary services, Internet
1062 access, or audio or video programming services taxed under this
1063 chapter in which the price of the bundled transaction is
1064 attributable to properties or services that are taxable and
1065 nontaxable, the portion of the price that is attributable to any
1066 nontaxable property or service shall be subject to the tax unless
1067 the provider can reasonably identify that portion from its books
1068 and records kept in the regular course of business.

1069 3. In the case of a bundled transaction that
1070 includes telecommunications services, ancillary services, Internet
1071 access, audio or video programming services subject to tax under
1072 this chapter in which the price is attributable to properties or
1073 services that are subject to the tax but the tax revenue from the



1074 different properties or services are dedicated to different funds
1075 or purposes, the provider shall allocate the price among the
1076 properties or services:

1077 a. By reasonably identifying the portion
1078 of the price attributable to each of the properties and services
1079 from its books and records kept in the regular course of business;
1080 or

1081 b. Based on a reasonable allocation
1082 methodology approved by the department.

1083 4. This subparagraph (vii) shall not create a
1084 right of action for a customer to require that the provider or the
1085 department, for purposes of determining the amount of tax
1086 applicable to a bundled transaction, allocate the price to the
1087 different portions of the transaction in order to minimize the
1088 amount of tax charged to the customer. A customer shall not be
1089 entitled to rely on the fact that a portion of the price is
1090 attributable to properties or services not subject to tax unless
1091 the provider elects, after receiving a written request from the
1092 customer in the form required by the provider, to provide
1093 verifiable data based upon the provider's books and records that
1094 are kept in the regular course of business that reasonably
1095 identifies the portion of the price attributable to the properties
1096 or services not subject to the tax.

1097 (2) Persons making sales to consumers of electricity,
1098 current, power, natural gas, liquefied petroleum gas or other fuel



1099 for residential heating, lighting or other residential
1100 noncommercial or nonagricultural use or sales of potable water for
1101 residential, noncommercial or nonagricultural use shall indicate
1102 on each statement rendered to customers that such charges are
1103 exempt from sales taxes.

1104 (3) There is hereby levied, assessed and shall be paid on
1105 transportation charges on shipments moving between points within
1106 this state when paid directly by the consumer, a tax equal to the
1107 rate applicable to the sale of the property being transported.
1108 Such tax shall be reported and paid directly to the Department of
1109 Revenue by the consumer.

1110 **SECTION 13.** Section 27-65-93, Mississippi Code of 1972, is
1111 brought forward as follows:

1112 27-65-93. (1) The commissioner shall, from time to time,
1113 promulgate rules and regulations, not inconsistent with the
1114 provisions of the sales tax law, for making returns and for the
1115 ascertainment, assessment and collection of the tax imposed by the
1116 sales tax law as he may deem necessary to enforce its provisions;
1117 and, upon request, he shall furnish any taxpayer with a copy of
1118 the rules and regulations.

1119 (2) All forms, necessary for the enforcement of the sales
1120 tax law, shall be prescribed, printed and furnished by the
1121 commissioner.

1122 (3) The commissioner may adopt rules and regulations
1123 providing for the issuance of permits to manufacturers, utilities,



1124 construction contractors, companies receiving bond financing
1125 through the Mississippi Business Finance Corporation or the
1126 Mississippi Development Authority, and other taxpayers as
1127 determined by the commissioner, and the commissioner shall adopt
1128 rules and regulations providing for the issuance of a permit to
1129 any qualified business or industry, which is certified as such by
1130 the Mississippi Development Authority pursuant to the Mississippi
1131 Flexible Tax Incentive Act and awarded any mFlex tax incentive
1132 amount for such qualified business's or industry's qualified
1133 economic development project, certified as such by the Mississippi
1134 Development Authority pursuant to the Mississippi Flexible Tax
1135 Incentive Act, to purchase tangible personal property taxed under
1136 Section 27-65-17, items taxed under Section 27-65-18, items taxed
1137 under Section 27-65-19, services taxed under Section 27-65-23,
1138 items taxed under Section 27-65-24, and items taxed under Section
1139 27-65-26 without the payment to the vendor of the tax imposed by
1140 the sales and use tax laws, and providing for persons to report
1141 and pay the tax directly to the commissioner in instances where
1142 the commissioner determines that these provisions will facilitate
1143 and expedite the collection of the tax at the proper rates which
1144 may be due on purchases by the permittee. Under the provisions of
1145 this chapter, the vendor is relieved of collecting and remitting
1146 the taxes specified hereunder and the person holding the permit
1147 shall become liable for such taxes instead of the seller. The



1148 full enforcement provisions of the sales tax law shall apply in
1149 the collection of the tax from the permittee.

1150 **SECTION 14.** Section 27-67-5, Mississippi Code of 1972, is
1151 brought forward as follows:

1152 27-67-5. There is hereby levied, assessed and shall be
1153 collected from every person a tax for the privilege of using,
1154 storing or consuming, within this state, any tangible personal
1155 property or specified digital product possession of which is
1156 acquired in any manner.

1157 (a) The use tax hereby imposed and levied shall be
1158 collected at the same rates as imposed under Section 27-65-20, and
1159 Sections 27-65-17, 27-65-18, 27-65-19, 27-65-24, 27-65-25 and
1160 27-65-26 computed on the purchase or sales price, or value, as
1161 defined in this article.

1162 (b) It shall be the duty of the tax collectors of the
1163 several counties, or the commissioner, as the case may be, to
1164 collect, remit and account for the tax on the use of all vehicles
1165 licensed or registered by the State of Mississippi for the first
1166 time, except when the Mississippi use tax was collected by an
1167 authorized out-of-state dealer at the time of purchase, or when
1168 the use thereof was exempt by Section 27-67-7. The tax collector
1169 or the commissioner shall give to the person registering the
1170 vehicle a receipt in a form prescribed and furnished by the
1171 Department of Revenue for the amount of tax collected.



1172 The tax collector or commissioner is expressly prohibited
1173 from issuing a license tag to any applicant without collecting the
1174 tax levied by this article, unless positive proof is filed,
1175 together with the application for the license tag, that the
1176 Mississippi tax has been paid, or that the sale was exempt by
1177 Section 27-67-7.

1178 Persons not engaging and continuing in business so as to be
1179 registered for payment of sales and/or use tax may pay use tax due
1180 on the first use of boats, airplanes, equipment or other tangible
1181 personal property and specified digital products to county tax
1182 collectors who are hereby authorized to accept such payments on
1183 behalf of the commissioner. Receipts for all such payments shall
1184 be given to taxpayers in a form prescribed and furnished by the
1185 Department of Revenue.

1186 County tax collectors and the commissioner shall be liable
1187 for the tax they are required hereby to collect, and taxes which
1188 are in fact collected under authority of this section; and failure
1189 to properly collect or maintain proper records shall not relieve
1190 them of liability for payment to the commissioner. Deficiencies
1191 in collection or payment shall be assessed against the tax
1192 collector or commissioner in the same manner and subject to the
1193 same penalties and provisions for appeal as are deficiencies
1194 assessed against taxpayers.

1195 A dealer authorized to collect and remit the tax to the
1196 Department of Revenue shall give to the purchaser a receipt for



1197 the payment of the tax, in a form prescribed and furnished by the
1198 commissioner, which shall serve as proof of payment to the tax
1199 collector of the county in which the license is to be issued.

1200 Each tax collector of the several counties shall, on or
1201 before the twentieth day of each month, file a report with and pay
1202 to the commissioner all funds collected under the provisions of
1203 this article, less a commission of five percent (5%) which shall
1204 be retained by the tax collector as a commission for collecting
1205 such tax and be deposited in the county general fund. The report
1206 required to be filed shall cover all collections made during the
1207 calendar month next preceding the date on which the report is due
1208 and filed.

1209 Any error in the report and remittance to the commissioner
1210 may be adjusted on a subsequent report. If the error was in the
1211 collection by the tax collector, it shall be adjusted through the
1212 tax collector with the taxpayer before credit is allowed by the
1213 commissioner.

1214 All information relating to the collection of use tax by tax
1215 collectors and such records as the commissioner may require shall
1216 be preserved in the tax collector's office for a period of three
1217 (3) years for audit by the commissioner.

1218 **SECTION 15.** Sections 5, 6, 7 and 8 of this act shall be
1219 codified as new sections in Chapter 65, Title 27, Mississippi Code
1220 of 1972. Sections 9 and 10 of this act shall be codified as new
1221 sections in Chapter 67, Title 27, Mississippi Code of 1972.



1222 **SECTION 16.** This act shall take effect and be in force from
1223 and after July 1, 2023.

