

By: Senator(s) Harkins, Sparks

To: Finance

SENATE BILL NO. 2449
(As Sent to Governor)

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 AMEND SECTION 27-65-7,
4 MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF THE TERM
5 "RETAIL SALE" UNDER THE STATE SALES TAX LAW; TO AMEND SECTION
6 27-65-19, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF
7 THE TERM "TELECOMMUNICATIONS SERVICE" FOR PURPOSES OF THE SALES
8 TAX IMPOSED ON TELECOMMUNICATIONS SERVICES; TO PROVIDE THAT SALES
9 OF COMPUTER SOFTWARE, COMPUTER SOFTWARE SERVICES, SPECIFIED
10 DIGITAL PRODUCTS, OR OTHER PRODUCTS DELIVERED ELECTRONICALLY,
11 SHALL BE TAXED AS PROVIDED IN OTHER SECTIONS OF THE STATE SALES
12 TAX LAW; TO AMEND SECTION 27-65-23, MISSISSIPPI CODE OF 1972, TO
13 EXCLUDE COMPUTER SOFTWARE SALES FROM THE SALES TAX IMPOSED ON
14 VARIOUS SERVICES; TO PROVIDE THAT THE SALES TAX IMPOSED ON
15 COMPUTER SOFTWARE SERVICES APPLIES TO SUCH SERVICES THAT ARE
16 ACTUALLY PERFORMED WITHIN THIS STATE; TO PROVIDE THAT WHEN A
17 TAXPAYER PERFORMS SERVICES COVERED BY THIS SECTION, WHICH ARE
18 PERFORMED BOTH IN INTRASTATE AND INTERSTATE COMMERCE, THE TAXPAYER
19 MAY UTILIZE ANY REASONABLE FORMULAE OF APPORTIONMENT WHICH WILL
20 APPORTION TO THIS STATE, FOR TAXATION, THAT PORTION OF THE
21 SERVICES WHICH ARE PERFORMED WITHIN THIS STATE; TO AMEND SECTION
22 27-65-93, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE
23 COMMISSIONER OF REVENUE SHALL ADOPT RULES AND REGULATIONS
24 PROVIDING FOR THE ISSUANCE OF A PERMIT TO PURCHASERS AND USERS OF
25 COMPUTER SOFTWARE OR COMPUTER SOFTWARE SERVICES TO PURCHASE SUCH
26 ITEMS AND SERVICES WITHOUT THE PAYMENT TO THE VENDOR OF SALES TAX
27 AND USE TAX; TO DEFINE THE TERMS "COMPUTER SOFTWARE", "COMPUTER
28 SOFTWARE SERVICE" AND "INFORMATION AND DATA PROCESSING SERVICES"
29 UNDER THE STATE SALES TAX LAW; TO PROVIDE FOR THE ALLOCATION OF
30 TAXABLE AND NONTAXABLE PORTIONS OF COMPUTER SOFTWARE AND COMPUTER
31 SOFTWARE SERVICE IN BUNDLED TRANSACTIONS; TO PROVIDE FOR THE
32 APPORTIONMENT OF THE USE OF TAXABLE COMPUTER SOFTWARE AND COMPUTER
33 SOFTWARE SERVICES BOTH WITHIN AND WITHOUT THIS STATE; TO PROVIDE
34 THAT FOR PURPOSES OF SALES TAX AND USE TAX, COMPUTER SOFTWARE OR



35 COMPUTER SOFTWARE SERVICES PROVIDED BY ONE LEGAL ENTITY TO ANOTHER
36 COMMONLY OWNED, RELATED, OR AFFILIATED ENTITY SHALL BE TREATED AS
37 NONTAXABLE TRANSFERS BETWEEN DIFFERENT SEGMENTS OF ONE LEGAL
38 ENTITY, WITH PROPER CREDIT ALLOWED FOR MISSISSIPPI SALES OR USE
39 TAX PAID AND CREDIT FOR SALES OR USE TAX PAID TO ANOTHER STATE AS
40 PROVIDED IN THE STATE SALES TAX LAW OR STATE USE TAX LAW,
41 REGARDLESS OF WHICH AFFILIATED ENTITY PAID THE SALES OR USE TAX
42 FOR WHICH CREDIT IS TAKEN; TO PROVIDE THAT A TAXPAYER THAT HAS
43 PAID A SALES TAX OR USE TAX TO ANOTHER STATE OR LOCAL TAXING
44 JURISDICTION ON COMPUTER SOFTWARE OR COMPUTER SOFTWARE SERVICE
45 THAT IS TAXABLE IN THIS STATE SHALL BE ALLOWED A CREDIT AGAINST
46 THE TAX IMPOSED IN THIS STATE ON SUCH COMPUTER SOFTWARE OR
47 COMPUTER SOFTWARE SERVICE TO THE EXTENT THAT THE AMOUNT OF THE
48 OTHER TAX IS PROPERLY DUE AND ACTUALLY PAID IN THE OTHER STATE OR
49 LOCAL TAXING JURISDICTION AND TO THE EXTENT THAT THE RATE OF SALES
50 TAX IMPOSED BY AND PAID IN THE OTHER STATE OR LOCAL TAXING
51 JURISDICTION DOES NOT EXCEED THE RATE OF SALES TAX OR USE TAX
52 IMPOSED IN THIS STATE; TO AMEND SECTION 27-67-3, MISSISSIPPI CODE
53 OF 1972, TO REVISE THE DEFINITION OF THE TERM TANGIBLE PERSONAL
54 PROPERTY UNDER THE STATE USE TAX LAW; TO DEFINE THE TERM "COMPUTER
55 SOFTWARE" UNDER THE STATE USE TAX LAW; TO AMEND SECTION 27-67-5,
56 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT COMPUTER SOFTWARE
57 MAINTAINED ON A SERVER LOCATED OUTSIDE THE STATE AND ACCESSIBLE
58 FOR USE ONLY VIA THE INTERNET IS NOT A TAXABLE USE, STORAGE OR
59 CONSUMPTION UNDER THE STATE USE TAX LAW; AND FOR RELATED PURPOSES.

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

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

63 27-65-3. The words, terms and phrases, when used in this
64 chapter, shall have the meanings ascribed to them herein.

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

67 (b) "Commissioner" means the Commissioner of Revenue of
68 the Department of Revenue.

69 (c) "Person" means and includes any individual, firm,
70 copartnership, joint venture, association, corporation, promoter
71 of a temporary event, estate, trust or other group or combination
72 acting as a unit, and includes the plural as well as the singular



73 in number. "Person" shall include husband or wife, or both, where
74 joint benefits are derived from the operation of a business taxed
75 hereunder. "Person" shall also include any state, county,
76 municipal or other agency or association engaging in a business
77 taxable under this chapter.

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

80 (e) "Taxpayer" means any person liable for or having
81 paid any tax to the State of Mississippi under the provisions of
82 this chapter. A taxpayer is required to obtain a sales tax permit
83 under Section 27-65-27 before engaging in business in this state.
84 If a taxpayer fails to obtain a sales tax permit before engaging
85 in business in this state, the taxpayer shall pay the retail rate
86 on all purchases of tangible personal property and/or services in
87 this state, even if purchased for resale. Upon obtaining a sales
88 tax permit, a previously unregistered taxpayer shall file sales
89 tax returns for all tax periods during which he engaged in
90 business in this state without a sales tax permit, and report and
91 pay the sales tax accruing from his operation during this period
92 and any applicable penalties and interest. On such return, the
93 taxpayer may take a credit for any sales taxes paid during the
94 period he operated without a sales tax permit on a purchase that
95 would have constituted a wholesale sale if the taxpayer had a
96 sales tax permit at the time of the purchase and if proper
97 documentation exists to substantiate a wholesale sale. This



98 credit may also be allowed in any audit of the taxpayer. Any
99 penalties and interest owed by the taxpayer on the return or in an
100 audit for a period during which he operated without a sales tax
101 permit may be determined based on the sales tax accruing from the
102 taxpayer's operation for that period after the taking of this
103 credit.

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

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

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

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

118 (ii) The situs of wholesale sales of tangible
119 personal property taxed at wholesale rates, the amount of which is
120 allowed as a credit against the sales tax liability of the
121 retailer, shall be the same as the location of the business of the
122 retailer receiving the credit.



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

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

130 (g) "Delivery charges" shall mean and include any
131 expenses incurred by a seller in acquiring merchandise for sale in
132 the regular course of business commonly known as "freight-in" or
133 "transportation costs-in." "Delivery charges" also include any
134 charges made by the seller for delivery of property sold to the
135 purchaser.

136 (h) "Gross proceeds of sales" means the value
137 proceeding or accruing from the full sale price of tangible
138 personal property, including installation charges, without any
139 deduction for delivery charges, cost of property sold, other
140 expenses or losses, or taxes of any kind except those expressly
141 exempt by this chapter.

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

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



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

149 (iii) The amount of the consideration attributable
150 to the sale is fixed and determinable by the seller at the time of
151 the sale of the item to the purchaser; and

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

153 1. The purchaser presents a coupon,
154 certificate or other documentation to the seller to claim a price
155 reduction or discount where the coupon, certificate or
156 documentation is authorized, distributed or granted by a third
157 party with the understanding that the third party will reimburse
158 any seller to whom the coupon, certificate or documentation is
159 presented;

160 2. The purchaser identified himself or
161 herself to the seller as a member of a group or organization
162 entitled to a price reduction or discount (a "preferred customer"
163 card that is available to any patron does not constitute
164 membership in such a group); or

165 3. The price reduction or discount is
166 identified as a third-party price reduction or discount on the
167 invoice received by the purchaser or on a coupon, certificate or
168 other documentation presented by the purchaser.

169 Where a trade-in is taken as part payment on tangible
170 personal property sold, "gross proceeds of sales" shall include
171 only the difference received between the selling price of the



172 tangible personal property and the amount allowed for a trade-in
173 of property of the same kind. When the trade-in is subsequently
174 sold, the selling price thereof shall be included in "gross
175 proceeds of sales."

176 "Gross proceeds of sales" shall include the value of any
177 goods, wares, merchandise or property purchased at wholesale or
178 manufactured, and any mineral or natural resources produced, which
179 are withdrawn or used from an established business or from the
180 stock in trade for consumption or any other use in the business or
181 by the owner. However, "gross proceeds of sales" does not include
182 meals prepared by a restaurant and provided at no charge to
183 employees of the restaurant or donated to a charitable
184 organization that regularly provides food to the needy and the
185 indigent and which has been granted exemption from the federal
186 income tax as an organization described in Section 501(c)(3) of
187 the Internal Revenue Code of 1986.

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

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

193 (i) "Gross income" means the total charges for service
194 or the total receipts (actual or accrued) derived from trades,
195 business or commerce by reason of the investment of capital in the
196 business engaged in, including the sale or rental of tangible



197 personal property, compensation for labor and services performed,
198 and including the receipts from the sales of property retained as
199 toll, without any deduction for rebates, cost of property sold,
200 cost of materials used, labor costs, interest paid, losses or any
201 expense whatever.

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

205 However, "gross income" or "gross proceeds of sales" shall
206 not be construed to include the value of goods returned by
207 customers when the total sale price is refunded either in cash or
208 by credit, or cash discounts allowed and taken on sales. Cash
209 discounts shall not include the value of trading stamps given with
210 a sale of property.

211 (j) "Tangible personal property" means personal
212 property perceptible to the human senses or by chemical analysis
213 as opposed to real property or intangibles and shall include
214 property sold on an installed basis which may become a part of
215 real or personal property. "Tangible personal property" shall
216 also include computer software but shall not include
217 electronically stored or maintained data.

218 (k) "Installation charges" shall mean and include the
219 charge for the application of tangible personal property to real
220 or personal property without regard to whether or not it becomes a
221 part of the real property or retains its personal property



222 classification. It shall include, but not be limited to, sales in
223 place of roofing, tile, glass, carpets, drapes, fences, awnings,
224 window air-conditioning units, gasoline pumps, window guards,
225 floor coverings, carports, store fixtures, aluminum and plastic
226 siding, tombstones and similar personal property.

227 (1) "Newspaper" means a periodical which:

228 (i) Is not published primarily for advertising
229 purposes and has not contained more than seventy-five percent
230 (75%) advertising in more than one-half (1/2) of its issues during
231 any consecutive twelve-month period excluding separate advertising
232 supplements inserted into but separately identifiable from any
233 regular issue or issues;

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

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

243 (iv) Is issued from a known office of publication,
244 which shall be the principal public business office of the
245 newspaper and need not be the place at which the periodical is



246 printed and a newspaper shall be deemed to be "published" at the
247 place where its known office of publication is located;

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

252 (vi) Is originated and published for the
253 dissemination of current news and intelligence of varied, broad
254 and general public interest, announcements and notices, opinions
255 as editorials on a regular or irregular basis, and advertising and
256 miscellaneous reading matter.

257 The term "newspaper" shall include periodicals which are
258 designed primarily for free circulation or for circulation at
259 nominal rates as well as those which are designed for circulation
260 at more than a nominal rate.

261 The term "newspaper" shall not include a publication or
262 periodical which is published, sponsored by, is directly supported
263 financially by, or is published to further the interests of, or is
264 directed to, or has a circulation restricted, in whole or in part,
265 to any particular sect, denomination, labor or fraternal
266 organization or other special group or class or citizens.

267 For purposes of this paragraph, a periodical designed
268 primarily for free circulation or circulation at nominal rates
269 shall not be considered to be a newspaper unless such periodical
270 has made an application for such status to the department in the



271 manner prescribed by the department and has provided to the
272 department documentation satisfactory to the department showing
273 that such periodical meets the requirements of the definition of
274 the term "newspaper." However, if such periodical has been
275 determined to be a newspaper under action taken by the department
276 on or before April 11, 1996, such periodical shall be considered
277 to be a newspaper without the necessity of applying for such
278 status. A determination by the Department of Revenue that a
279 publication is a newspaper shall be limited to the application of
280 this chapter and shall not establish that the publication is a
281 newspaper for any other purpose.

282 (m) "MPC" or "Material Purchase Certificate" means a
283 certificate for which a person that is liable for the tax levy
284 under Section 27-65-21 can apply and obtain from the commissioner,
285 and when issued, entitles the holder to purchase materials and
286 services that are to become a component part of a structure to be
287 erected or repaired with no tax due. Any person taxable under
288 Section 27-65-21 who obtains an MPC for a project and purchases
289 materials and services in this state that are to become a
290 component part of a structure being erected or repaired in the
291 project and at any time pays sales tax on these purchases may,
292 after obtaining the MPC for the project, take a credit against his
293 sales taxes for the sales tax paid on these purchases if proper
294 documentation exists to substantiate the payment of the sales tax
295 on the purchase of component materials and services. This credit



296 may also be allowed in any audit of the taxpayer. Any penalties
297 and interest owed by the taxpayer on the return or in the audit
298 where this credit is taken may be determined based on the sales
299 tax due after the taking of this credit.

300 **SECTION 2.** Section 27-65-7, Mississippi Code of 1972, is
301 amended as follows:

302 27-65-7. "Retailer" shall apply to a person making retail
303 sales through vending machines, by maintaining a store, or
304 operating as a transient vendor, or renting or leasing tangible
305 personal property. Retailer also includes persons who facilitate
306 the sale of services or tangible personal property that belongs to
307 a third party.

308 "Retail sales" shall mean and include all sales of tangible
309 personal property physically or electronically delivered or
310 located within this state, except those defined herein as
311 wholesale and those made to a wholesaler, jobber, manufacturer or
312 custom processor for resale or for further processing.

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



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

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

330 Computer software maintained on a server located outside the
331 state and accessible for use only via the internet is not a
332 taxable retail sale.

333 **SECTION 3.** Section 27-65-19, Mississippi Code of 1972, is
334 amended as follows:

335 27-65-19. (1) (a) (i) Except as otherwise provided in
336 this subsection, upon every person selling to consumers,
337 electricity, current, power, potable water, steam, coal, natural
338 gas, liquefied petroleum gas or other fuel, there is hereby
339 levied, assessed and shall be collected a tax equal to seven
340 percent (7%) of the gross income of the business. Provided, gross
341 income from sales to consumers of electricity, current, power,
342 natural gas, liquefied petroleum gas or other fuel for residential
343 heating, lighting or other residential noncommercial or



344 nonagricultural use, and sales of potable water for residential,
345 noncommercial or nonagricultural use shall be excluded from
346 taxable gross income of the business. Provided further, upon
347 every such seller using electricity, current, power, potable
348 water, steam, coal, natural gas, liquefied petroleum gas or other
349 fuel for nonindustrial purposes, there is hereby levied, assessed
350 and shall be collected a tax equal to seven percent (7%) of the
351 cost or value of the product or service used.

352 (ii) Gross income from sales to a church that is
353 exempt from federal income taxation under 26 USCS Section
354 501(c)(3) of electricity, current, power, natural gas, liquefied
355 petroleum gas or other fuel for heating, lighting or other use,
356 and sales of potable water to such a church shall be excluded from
357 taxable gross income of the business if the electricity, current,
358 power, natural gas, liquefied petroleum gas or potable water is
359 utilized on property that is primarily used for religious or
360 educational purposes.

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

366 1. Use in an enhanced oil recovery project,
367 including, but not limited to, use for cycling, repressuring or
368 lifting of oil; or



369 2. Permanent sequestration in a geological
370 formation.

371 (ii) The one and one-half percent (1-1/2%) rate
372 provided for in this subsection shall apply to electricity,
373 current, power, steam, coal, natural gas, liquefied petroleum gas
374 or other fuel that is sold to a producer of oil and gas for use
375 directly in enhanced oil recovery using carbon dioxide and/or the
376 permanent sequestration of carbon dioxide in a geological
377 formation.

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

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

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

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

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



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

395 * * *

396 Sales of computer software, computer software services,
397 specified digital products, or other products delivered
398 electronically, including, but not limited to, music, games,
399 reading materials or ring tones, shall be taxed as provided in
400 other sections of this chapter.

401 (ii) A person, upon proof that he has paid a tax
402 in another state on an event described in subparagraph (i) of this
403 paragraph (d), shall be allowed a credit against the tax imposed
404 in this paragraph (d) on interstate telecommunications service
405 charges to the extent that the amount of such tax is properly due
406 and actually paid in such other state and to the extent that the
407 rate of sales tax imposed by and paid in such other state does not
408 exceed the rate of sales tax imposed by this paragraph (d).

409 (iii) Charges by one (1) telecommunications
410 provider to another telecommunications provider holding a permit
411 issued under Section 27-65-27 for services that are resold by such
412 other telecommunications provider, including, but not limited to,
413 access charges, shall not be subject to the tax levied pursuant to
414 this paragraph (d).

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

416 1. "Telecommunications service" means the
417 electronic transmission, conveyance or routing of voice, data,



418 audio, video or any other information or signals to a point, or
419 between points. The term "telecommunications service" includes
420 such transmission, conveyance or routing in which computer
421 processing applications are used to act on the form, code or
422 protocol of the content for purposes of transmission, conveyance
423 or routing without regard to whether such service is referred to
424 as Voice over Internet Protocol services or is classified by the
425 Federal Communications Commission as enhanced or value added. The
426 term "telecommunications service" shall not include:

427 a. Data processing and information
428 services that allow data to be generated, acquired, stored,
429 processed or retrieved and delivered by an electronic transmission
430 to a purchaser where such purchaser's primary purpose for the
431 underlying transaction is the processed data or information;

432 b. Installation or maintenance of wiring
433 or equipment on a customer's premises;

434 c. Tangible personal property;

435 d. Advertising, including, but not
436 limited to, directory advertising;

437 e. Billing and collection services
438 provided to third parties;

439 f. Internet access service;

440 g. Radio and television audio and video
441 programming services regardless of the medium, including the
442 furnishing of transmission, conveyance and routing of such



443 services by the programming service provider. Radio and
444 television audio and video programming services shall include, but
445 not be limited to, cable service as defined in 47 USCS 522(6) and
446 audio and video programming services delivered by commercial
447 mobile radio service providers, as defined in 47 CFR 20.3;

448 h. Ancillary services; or

449 i. Digital products delivered
450 electronically, including, but not limited to, computer software,
451 computer software services, electronically stored or maintained
452 data, music, video, reading materials, specified digital products,
453 or ring tones.

454 2. "Ancillary services" means services that
455 are associated with or incidental to the provision of
456 telecommunications services, including, but not limited to,
457 detailed telecommunications billing, directory assistance,
458 vertical service and voice mail service.

459 a. "Conference bridging" means an
460 ancillary service that links two (2) or more participants of an
461 audio or video conference call and may include the provision of a
462 telephone number. Conference bridging does not include the
463 telecommunications services used to reach the conference bridge.

464 b. "Detailed telecommunications billing
465 service" means an ancillary service of separately stating
466 information pertaining to individual calls on a customer's billing
467 statement.



468 c. "Directory assistance" means an
469 ancillary service of providing telephone number information and/or
470 address information.

471 d. "Vertical service" means an ancillary
472 service that is offered in connection with one or more
473 telecommunications services, which offers advanced calling
474 features that allow customers to identify callers and to manage
475 multiple calls and call connections, including conference bridging
476 services.

477 e. "Voice mail service" means an
478 ancillary service that enables the customer to store, send or
479 receive recorded messages. Voice mail service does not include
480 any vertical services that the customer may be required to have in
481 order to utilize the voice mail service.

482 3. "Intrastate" means telecommunications
483 service that originates in one (1) United States state or United
484 States territory or possession, and terminates in the same United
485 States state or United States territory or possession.

486 4. "Interstate" means a telecommunications
487 service that originates in one (1) United States state or United
488 States territory or possession, and terminates in a different
489 United States state or United States territory or possession.

490 5. "International" means a telecommunications
491 service that originates or terminates in the United States and
492 terminates or originates outside the United States, respectively.



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

495 1. Except for the defined telecommunications
496 services in item 3 of this subparagraph, the sales of
497 telecommunications services sold on a call-by-call basis shall be
498 sourced to:

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

501 b. Each level of taxing jurisdiction
502 where the call either originates or terminates and in which the
503 service address is also located.

504 2. Except for the defined telecommunications
505 services in item 3 of this subparagraph, a sale of
506 telecommunications services sold on a basis other than a
507 call-by-call basis, is sourced to the customer's place of primary
508 use.

509 3. The sale of the following
510 telecommunications services shall be sourced to each level of
511 taxing jurisdiction as follows:

512 a. A sale of mobile telecommunications
513 services other than air-to-ground radiotelephone service and
514 prepaid calling service is sourced to the customer's place of
515 primary use as required by the Mobile Telecommunication Sourcing
516 Act.



517 A. A home service provider shall be
518 responsible for obtaining and maintaining the customer's place of
519 primary use. The home service provider shall be entitled to rely
520 on the applicable residential or business street address supplied
521 by such customer, if the home service provider's reliance is in
522 good faith; and the home service provider shall be held harmless
523 from liability for any additional taxes based on a different
524 determination of the place of primary use for taxes that are
525 customarily passed on to the customer as a separate itemized
526 charge. A home service provider shall be allowed to treat the
527 address used for purposes of the tax levied by this chapter for
528 any customer under a service contract in effect on August 1, 2002,
529 as that customer's place of primary use for the remaining term of
530 such service contract or agreement, excluding any extension or
531 renewal of such service contract or agreement. Month-to-month
532 services provided after the expiration of a contract shall be
533 treated as an extension or renewal of such contract or agreement.

534 B. If the commissioner determines
535 that the address used by a home service provider as a customer's
536 place of primary use does not meet the definition of the term
537 "place of primary use" as defined in subitem a.A. of this item 3,
538 the commissioner shall give binding notice to the home service
539 provider to change the place of primary use on a prospective basis
540 from the date of notice of determination; however, the customer



541 shall have the opportunity, prior to such notice of determination,
542 to demonstrate that such address satisfies the definition.

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

548 b. A sale of postpaid calling service is
549 sourced to the origination point of the telecommunications signal
550 as first identified by either:

551 A. The seller's telecommunications
552 system; or

553 B. Information received by the
554 seller from its service provider, where the system used to
555 transport such signals is not that of the seller.

556 c. A sale of a prepaid calling service
557 or prepaid wireless calling service shall be subject to the tax
558 imposed by this paragraph if the sale takes place in this state.
559 If the customer physically purchases a prepaid calling service or
560 prepaid wireless calling service at the vendor's place of
561 business, the sale is deemed to take place at the vendor's place
562 of business. If the customer does not physically purchase the
563 service at the vendor's place of business, the sale of a prepaid
564 calling card or prepaid wireless calling card is deemed to take



565 place at the first of the following locations that applies to the
566 sale:

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

569 B. The customer's billing address;

570 C. Any other address of the
571 customer that is known by the vendor; or

572 D. The address of the vendor, or
573 alternatively, in the case of a prepaid wireless calling service,
574 the location associated with the mobile telephone number.

575 4. A sale of a private communication service
576 is sourced as follows:

577 a. Service for a separate charge related
578 to a customer channel termination point is sourced to each level
579 of jurisdiction in which such customer channel termination point
580 is located.

581 b. Service where all customer
582 termination points are located entirely within one (1)
583 jurisdiction or levels of jurisdiction is sourced in such
584 jurisdiction in which the customer channel termination points are
585 located.

586 c. Service for segments of a channel
587 between two (2) customer channel termination points located in
588 different jurisdictions and which segments of a channel are
589 separately charged is sourced fifty percent (50%) in each level of



590 jurisdiction in which the customer channel termination points are
591 located.

592 d. Service for segments of a channel
593 located in more than one (1) jurisdiction or levels of
594 jurisdiction and which segments are not separately billed is
595 sourced in each jurisdiction based on the percentage determined by
596 dividing the number of customer channel termination points in such
597 jurisdiction by the total number of customer channel termination
598 points.

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

601 (vi) For purposes of subparagraph (v) of this
602 paragraph (d):

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

607 2. "Call-by-call basis" means any method of
608 charging for telecommunications services where the price is
609 measured by individual calls.

610 3. "Communications channel" means a physical
611 or virtual path of communications over which signals are
612 transmitted between or among customer channel termination points.

613 4. "Customer" means the person or entity that
614 contracts with the seller of telecommunications services. If the



615 end user of telecommunications services is not the contracting
616 party, the end user of the telecommunications service is the
617 customer of the telecommunications service. Customer does not
618 include a reseller of telecommunications service or for mobile
619 telecommunications service of a serving carrier under an agreement
620 to serve the customer outside the home service provider's licensed
621 service area.

622 5. "Customer channel termination point" means
623 the location where the customer either inputs or receives the
624 communications.

625 6. "End user" means the person who utilizes
626 the telecommunications service. In the case of an entity, "end
627 user" means the individual who utilizes the service on behalf of
628 the entity.

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

632 8. "Mobile telecommunications service" has
633 the meaning ascribed to such term in Section 124(7) of Public Law
634 106-252 (Mobile Telecommunications Sourcing Act).

635 9. "Place of primary use" means the street
636 address representative of where the customer's use of the
637 telecommunications service primarily occurs, which must be the
638 residential street address or the primary business street address
639 of the customer. In the case of mobile telecommunications



640 services, the place of primary use must be within the licensed
641 service area of the home service provider.

642 10. "Post-paid calling service" means the
643 telecommunications service obtained by making a payment on a
644 call-by-call basis either through the use of a credit card or
645 payment mechanism such as a bank card, travel card, credit card or
646 debit card, or by charge made to a telephone number which is not
647 associated with the origination or termination of the
648 telecommunications service. A post-paid calling service includes
649 a telecommunications service, except a prepaid wireless calling
650 service that would be a prepaid calling service except it is not
651 exclusively a telecommunications service.

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

658 12. "Prepaid wireless calling service" means
659 a telecommunications service that provides the right to utilize
660 mobile wireless service as well as other nontelecommunications
661 services, including the download of digital products delivered
662 electronically, content and ancillary service, which must be paid
663 for in advance that is sold in predetermined units or dollars of
664 which the number declines with use in a known amount.



665 13. "Private communication service" means a
666 telecommunications service that entitles the customer to exclusive
667 or priority use of a communications channel or group of channels
668 between or among termination points, regardless of the manner in
669 which such channel or channels are connected, and includes
670 switching capacity, extension lines, stations and any other
671 associated services that are provided in connection with the use
672 of such channel or channels.

673 14. "Service address" means:

674 a. The location of the
675 telecommunications equipment to which a customer's call is charged
676 and from which the call originates or terminates, regardless of
677 where the call is billed or paid.

678 b. If the location in subitem a of this
679 item 14 is not known, the origination point of the signal of the
680 telecommunications services first identified by either the
681 seller's telecommunications system or in information received by
682 the seller from its service provider, where the system used to
683 transport such signals is not that of the seller.

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

687 (vii) 1. For purposes of this subparagraph (vii),
688 "bundled transaction" means a transaction that consists of
689 distinct and identifiable properties or services which are sold



690 for a single nonitemized price but which are treated differently
691 for tax purposes.

692 2. In the case of a bundled transaction that
693 includes telecommunications services, ancillary services, internet
694 access, or audio or video programming services taxed under this
695 chapter in which the price of the bundled transaction is
696 attributable to properties or services that are taxable and
697 nontaxable, the portion of the price that is attributable to any
698 nontaxable property or service shall be subject to the tax unless
699 the provider can reasonably identify that portion from its books
700 and records kept in the regular course of business.

701 3. In the case of a bundled transaction that
702 includes telecommunications services, ancillary services, internet
703 access, audio or video programming services subject to tax under
704 this chapter in which the price is attributable to properties or
705 services that are subject to the tax but the tax revenue from the
706 different properties or services are dedicated to different funds
707 or purposes, the provider shall allocate the price among the
708 properties or services:

709 a. By reasonably identifying the portion
710 of the price attributable to each of the properties and services
711 from its books and records kept in the regular course of business;
712 or

713 b. Based on a reasonable allocation
714 methodology approved by the department.



715 4. This subparagraph (vii) shall not create a
716 right of action for a customer to require that the provider or the
717 department, for purposes of determining the amount of tax
718 applicable to a bundled transaction, allocate the price to the
719 different portions of the transaction in order to minimize the
720 amount of tax charged to the customer. A customer shall not be
721 entitled to rely on the fact that a portion of the price is
722 attributable to properties or services not subject to tax unless
723 the provider elects, after receiving a written request from the
724 customer in the form required by the provider, to provide
725 verifiable data based upon the provider's books and records that
726 are kept in the regular course of business that reasonably
727 identifies the portion of the price attributable to the properties
728 or services not subject to the tax.

729 (2) Persons making sales to consumers of electricity,
730 current, power, natural gas, liquefied petroleum gas or other fuel
731 for residential heating, lighting or other residential
732 noncommercial or nonagricultural use or sales of potable water for
733 residential, noncommercial or nonagricultural use shall indicate
734 on each statement rendered to customers that such charges are
735 exempt from sales taxes.

736 (3) There is hereby levied, assessed and shall be paid on
737 transportation charges on shipments moving between points within
738 this state when paid directly by the consumer, a tax equal to the
739 rate applicable to the sale of the property being transported.



740 Such tax shall be reported and paid directly to the Department of
741 Revenue by the consumer.

742 **SECTION 4.** Section 27-65-23, Mississippi Code of 1972, is
743 amended as follows:

744 27-65-23. Upon every person engaging or continuing in any of
745 the following businesses or activities there is hereby levied,
746 assessed and shall be collected a tax equal to seven percent (7%)
747 of the gross income of the business, except as otherwise provided:

748 Air-conditioning installation or repairs;

749 Automobile, motorcycle, boat or any other vehicle
750 repairing or servicing;

751 Billiards, pool or domino parlors;

752 Bowling or tenpin alleys;

753 Burglar and fire alarm systems or services;

754 Car washing – automatic, self-service, or manual;

755 Computer software * * * services actually performed
756 within this state;

757 Cotton compresses or cotton warehouses;

758 Custom creosoting or treating, custom planing, custom
759 sawing;

760 Custom meat processing;

761 Electricians, electrical work, wiring, all repairs or
762 installation of electrical equipment;

763 Elevator or escalator installing, repairing or
764 servicing;



765 Film developing or photo finishing;
766 Foundries, machine or general repairing;
767 Furniture repairing or upholstering;
768 Grading, excavating, ditching, dredging or landscaping;
769 Hotels (as defined in Section 41-49-3), motels, tourist
770 courts or camps, trailer parks;
771 Insulating services or repairs;
772 Jewelry or watch repairing;
773 Laundering, cleaning, pressing or dyeing;
774 Marina services;
775 Mattress renovating;
776 Office and business machine repairing;
777 Parking garages and lots;
778 Plumbing or pipe fitting;
779 Public storage warehouses (There shall be no tax levied
780 on gross income of a public storage warehouse derived from the
781 temporary storage of tangible personal property in this state
782 pending shipping or mailing of the property to another state.);
783 Refrigerating equipment repairs;
784 Radio or television installing, repairing, or servicing;
785 Renting or leasing personal property used within this
786 state;
787 Services performed in connection with geophysical
788 surveying, exploring, developing, drilling, producing,



789 distributing, or testing of oil, gas, water and other mineral
790 resources;
791 Shoe repairing;
792 Storage lockers;
793 Telephone answering or paging services;
794 Termite or pest control services;
795 Tin and sheet metal shops;
796 TV cable systems, subscription TV services, and other
797 similar activities;
798 Vulcanizing, repairing or recapping of tires or tubes;
799 Welding; and
800 Woodworking or woodu-turning shops.

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

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

810 Income from renting or leasing tangible personal property
811 used within this state shall be taxed at the same rates as sales
812 of the same property.



813 Persons doing business in this state who rent transportation
814 equipment with a situs within or without the state to common,
815 contract or private commercial carriers are taxed on that part of
816 the income derived from use within this state. If specific
817 accounting is impracticable, a formula may be used with approval
818 of the commissioner.

819 A lessor may deduct from the tax computed on the rental
820 income from tangible personal property a credit for sales or use
821 tax paid to this state at the time of purchase of the specific
822 personal property being leased or rented until such credit has
823 been exhausted.

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

828 When a taxpayer performs * * * services covered by this
829 section, which are performed both in intrastate and interstate
830 commerce, * * * the taxpayer may utilize any reasonable formulae
831 of apportionment which will apportion to this state, for taxation,
832 that portion of the services which are performed within the State
833 of Mississippi.

834 **SECTION 5.** Section 27-65-93, Mississippi Code of 1972, is
835 amended as follows:

836 27-65-93. (1) The commissioner shall, from time to time,
837 promulgate rules and regulations, not inconsistent with the



838 provisions of the sales tax law, for making returns and for the
839 ascertainment, assessment and collection of the tax imposed by the
840 sales tax law as he may deem necessary to enforce its provisions;
841 and, upon request, he shall furnish any taxpayer with a copy of
842 the rules and regulations.

843 (2) All forms, necessary for the enforcement of the sales
844 tax law, shall be prescribed, printed and furnished by the
845 commissioner.

846 (3) The commissioner may adopt rules and regulations
847 providing for the issuance of permits to manufacturers, utilities,
848 construction contractors, companies receiving bond financing
849 through the Mississippi Business Finance Corporation or the
850 Mississippi Development Authority, and other taxpayers as
851 determined by the commissioner, and the commissioner shall adopt
852 rules and regulations providing for the issuance of a permit to
853 any qualified business or industry, which is certified as such by
854 the Mississippi Development Authority pursuant to the Mississippi
855 Flexible Tax Incentive Act and awarded any mFlex tax incentive
856 amount for such qualified business's or industry's qualified
857 economic development project, certified as such by the Mississippi
858 Development Authority pursuant to the Mississippi Flexible Tax
859 Incentive Act, to purchase tangible personal property taxed under
860 Section 27-65-17, items taxed under Section 27-65-18, items taxed
861 under Section 27-65-19, services taxed under Section 27-65-23,
862 items taxed under Section 27-65-24, and items taxed under Section



863 27-65-26 without the payment to the vendor of the tax imposed by
864 the sales and use tax laws, and providing for persons to report
865 and pay the tax directly to the commissioner in instances where
866 the commissioner determines that these provisions will facilitate
867 and expedite the collection of the tax at the proper rates which
868 may be due on purchases by the permittee. Under the provisions of
869 this chapter, the vendor is relieved of collecting and remitting
870 the taxes specified hereunder and the person holding the permit
871 shall become liable for such taxes instead of the seller. The
872 full enforcement provisions of the sales tax law shall apply in
873 the collection of the tax from the permittee.

874 The commissioner shall adopt rules and regulations providing
875 for the issuance of a permit to and at the election of purchasers
876 and users of computer software or computer software services to
877 purchase such items and services without the payment to the vendor
878 of the tax imposed by the sales and use tax laws, and providing
879 for persons to report and pay the tax directly to the
880 commissioner. Under the provisions of this chapter, the vendor is
881 relieved of collecting and remitting the taxes specified hereunder
882 and the person holding the permit shall become liable for such
883 taxes instead of the seller. The full enforcement provisions of
884 the sales tax law shall apply in the collection of the tax from
885 the permittee.

886 **SECTION 6.** (1) For purposes of this chapter the following
887 definitions shall apply:



888 (a) "Computer software" shall mean any computer program
889 or routine, or any set of one or more programs or routines, which
890 are used or intended to cause one or more computers, pieces of
891 computer-related peripheral equipment, automatic processing
892 equipment, or any combination thereof, to perform a task or set of
893 tasks. Computer software may be contained in or on magnetic
894 tapes, discs or other tangible or electronic media or downloaded
895 online. "Computer software" does not include charges for the use
896 of or right to use physical computer equipment, infrastructure,
897 servers, platforms and other tangible computer devices, including,
898 but not limited to, items commonly referred to as "platform as a
899 service" or "infrastructure as a service."

900 (b) "Computer software service" shall mean the
901 technical design and programming of computer software and includes
902 installing, configuring, debugging, modifying, testing, or
903 troubleshooting computer hardware, networks, programs or computer
904 software. Computer software service does not include the
905 following nonexclusive list of services:

906 (i) The use of or right to use physical computer
907 equipment, infrastructure, servers, platforms and other tangible
908 computer devices, including, but not limited to, items commonly
909 referred to as "platform as a service" or "infrastructure as a
910 service";

911 (ii) Information and data processing services;



912 (iii) Services that use a computer, computer
913 equipment, or computer software as a tool to perform or complete
914 that service;

915 (iv) Internet access services or charges;

916 (v) Payment processing or banking services;

917 (vi) Real estate listing or pricing services;

918 (vii) Electronic advertising and marketing
919 services; and

920 (viii) Social media services.

921 (c) "Information and data processing services" include,
922 but are not limited to, automated or nonautomated services where
923 the primary object of the service is the systematic performance of
924 operations by the service provider to enter, store, sort, analyze,
925 aggregate, classify, manipulate, convert, retrieve, extract and/or
926 compile the required information into an appropriate form, usable
927 information, or report. Information and data processing services
928 include, but are not limited to, the following services:

929 (i) Check or payment processing services;

930 (ii) Image processing services;

931 (iii) Form processing services;

932 (iv) Billing services;

933 (v) Transcription services;

934 (vi) Word processing services;

935 (vii) Survey processing services;

936 (viii) Payroll processing services;



- 937 (ix) Claim processing services;
938 (x) Research database services; and
939 (xi) Accounting and tax compliance services.

940 (2) If a single license fee or other payment encompasses
941 taxable computer software and/or computer software services, along
942 with other nontaxable items or services, the seller, service
943 provider, user or consumer may allocate such fee or payment
944 between the taxable and nontaxable items based on a reasonable
945 allocation of the payment to each separately identifiable item or
946 service encompassed by the fee or payment, if properly supported
947 by the books and records of the seller, service provider, user, or
948 consumer. If such information is not available from a seller or
949 service provider, or such information is not otherwise obtainable
950 after reasonable efforts by the user or consumer, the user or
951 consumer may make such allocation based on the best information
952 available to the user or consumer if properly supported by the
953 books and records of the user or consumer. There shall be no
954 presumption that the entire fee or payment is taxable because it
955 encompasses both taxable and nontaxable elements. If the
956 commissioner shall challenge or contest the allocation method
957 utilized by a seller, service provider, user, or consumer, the
958 commissioner must establish by a preponderance of the evidence (a)
959 that the allocation method utilized by the seller, service
960 provider, user, or consumer was not a reasonable method of
961 allocation, and (b) that the allocation method proposed by the



962 commissioner is the most reasonable of all available or
963 alternative methods.

964 (3) If a single license fee or other payment encompasses
965 taxable computer software and/or computer software services both
966 within and without this state, the seller, service provider, user
967 or consumer may apportion to this state, for taxation, that
968 portion of the license fee or payment attributable to computer
969 software located within the state or to computer software services
970 which are actually performed within the State of Mississippi.
971 Such allocation may be made on the following safe harbor methods,
972 if applicable to the circumstances, each of which shall be deemed
973 to be a reasonable method if properly supported by the books and
974 records of the seller, service provider, user or consumer:

975 (a) With respect to computer software physically
976 loaded, stored or maintained both within and without the state:

977 (i) Based on the specific identification of the
978 locations within and without Mississippi that the software is
979 loaded, stored or maintained;

980 (ii) Based on a ratio calculated by reference to
981 the number of computers or devices within and without Mississippi
982 on which the software is loaded, stored or maintained;

983 (iii) Based on a ratio calculated by reference to
984 the number of persons actually using the computer software within
985 and without Mississippi; or



986 (iv) Based on a ratio calculated by reference to
987 the number of persons licensed to use the computer software within
988 and without Mississippi.

989 (b) With respect to computer software services actually
990 performed within and without the state:

991 (i) Based on the specific amount of time spent by
992 each person performing the services while physically within the
993 state; or

994 (ii) Based on a ratio calculated by reference to
995 the actual time spent within and without Mississippi by all
996 persons performing the services.

997 If none of the above safe harbor allocation methods fairly
998 reflect the allocation of taxable computer software or computer
999 software services to the state, the seller, service provider, user
1000 or consumer may make such allocation based on the best information
1001 available to such person if properly supported by the books and
1002 records of the seller, service provider, user or consumer. If the
1003 commissioner shall challenge or contest the allocation method
1004 utilized by a seller, service provider, user or consumer, the
1005 commissioner must establish by a preponderance of the evidence 1.
1006 that the allocation method utilized by the seller, service
1007 provider, user, or consumer was not a reasonable method of
1008 allocation, and 2. that the allocation method proposed by the
1009 commissioner is the most reasonable of all available or
1010 alternative methods.



1011 (4) Notwithstanding any other provision in this chapter or
1012 Title 27, Chapter 67, Mississippi Code of 1972, and for purposes
1013 of the tax levied in this chapter and the tax levied in Chapter
1014 67, Mississippi Code of 1972, computer software or computer
1015 software services provided by one legal entity to another commonly
1016 owned, related or affiliated entity shall be treated as nontaxable
1017 transfers between different segments of one (1) legal entity, with
1018 proper credit allowed for Mississippi sales or use tax paid and/or
1019 credit for sales or use tax paid to another state as provided in
1020 this section or in Section 27-67-7, regardless of which affiliated
1021 entity paid the sales or use tax for which credit is taken.
1022 Nothing in this subsection shall be interpreted to exclude from
1023 taxation the purchase or payment by such organization to a third
1024 party seller or provider for any computer software or computer
1025 software services otherwise taxable under this chapter or Title
1026 27, Chapter 67, Mississippi Code of 1972.

1027 (5) A taxpayer, upon proof that a sales or use tax was paid
1028 to another state or local taxing jurisdiction on any computer
1029 software or computer software service that is taxable under this
1030 chapter or Title 27, Chapter 67, Mississippi Code of 1972, shall
1031 be allowed a credit against the tax imposed under this chapter or
1032 Title 27, Chapter 67, Mississippi Code of 1972, on such computer
1033 software or computer software service to the extent that the
1034 amount of the other tax was actually paid in the other state or
1035 local taxing jurisdiction, and to the extent that the rate of



1036 sales or use tax imposed by and paid in the other state or local
1037 taxing jurisdiction does not exceed the rate of sales or use tax
1038 imposed under this chapter or Title 27, Chapter 67, Mississippi
1039 Code of 1972.

1040 **SECTION 7.** Section 27-67-3, Mississippi Code of 1972, is
1041 amended as follows:

1042 27-67-3. Whenever used in this article, the words, phrases
1043 and terms shall have the meaning ascribed to them as follows:

1044 (a) "Tax Commission" or "department" means the
1045 Department of Revenue of the State of Mississippi.

1046 (b) "Commissioner" means the Commissioner of Revenue of
1047 the Department of Revenue.

1048 (c) "Person" means any individual, firm, partnership,
1049 joint venture, association, corporation, estate, trust, receiver,
1050 syndicate or any other group or combination acting as a unit and
1051 includes the plural as well as the singular in number. "Person"
1052 shall also include husband or wife, or both, where joint benefits
1053 are derived from the operation of a business taxed hereunder or
1054 where joint benefits are derived from the use of property taxed
1055 hereunder.

1056 (d) "Taxpayer" means any person liable for the payment
1057 of any tax hereunder, or liable for the collection and payment of
1058 the tax.

1059 (e) "Sale" or "purchase" means the exchange of
1060 properties for money or other consideration, and the barter of



1061 properties or products. Every closed transaction by which title
1062 to, or possession of, tangible personal property or specified
1063 digital products passes shall constitute a taxable event. A
1064 transaction whereby the possession of property or products is
1065 transferred but the seller retains title as security for payment
1066 of the selling price shall be deemed a sale.

1067 (f) "Purchase price" or "sales price" means the total
1068 amount for which tangible personal property or specified digital
1069 product is purchased or sold, valued in money, including
1070 installation and service charges, and freight charges to the point
1071 of use within this state, without any deduction for cost of
1072 property or products sold, expenses or losses, or taxes of any
1073 kind except those exempt by the sales tax law. "Purchase price"
1074 or "sales price" shall not include cash discounts allowed and
1075 taken or merchandise returned by customers when the total sales
1076 price is refunded either in cash or by credit, and shall not
1077 include amounts allowed for a trade-in of similar property or
1078 products. "Purchase price" or "sales price" does not include
1079 finance charges, carrying charges or any other addition to the
1080 selling price as a result of deferred payments by the purchaser.

1081 (g) "Lease" or "rent" means any agreement entered into
1082 for a consideration that transfers possession or control of
1083 tangible personal property or specified digital products to a
1084 person for use within this state.



1085 (h) "Value" means the estimated or assessed monetary
1086 worth of a thing or property. The value of property or products
1087 transferred into this state for sales promotion or advertising
1088 shall be an amount not less than the cost paid by the transferor
1089 or donor. The value of property or products which have been used
1090 in another state shall be determined by its cost less straight
1091 line depreciation provided that value shall never be less than
1092 twenty percent (20%) of the cost or other method acceptable to the
1093 commissioner. On property or products imported by the
1094 manufacturer thereof for rental or lease within this state, value
1095 shall be the manufactured cost of the property and freight to the
1096 place of use in Mississippi.

1097 (i) "Tangible personal property" means personal
1098 property perceptible to the human senses or by chemical analysis,
1099 as opposed to real property or intangibles. "Tangible personal
1100 property" shall include printed, mimeographed, multigraphed
1101 matter, or material reproduced in any other manner, and books,
1102 catalogs, manuals, publications or similar documents covering the
1103 services of collecting, compiling or analyzing information of any
1104 kind or nature. However, reports representing the work of persons
1105 such as lawyers, accountants, engineers and similar professionals
1106 shall not be included. "Tangible personal property" shall also
1107 include tangible advertising or sales promotion materials such as,
1108 but not limited to, displays, brochures, signs, catalogs, price
1109 lists, point of sale advertising materials and technical manuals.



1110 Tangible personal property shall also include computer
1111 software * * *.

1112 (j) "Person doing business in this state," "person
1113 maintaining a place of business within this state," or any similar
1114 term means any person having within this state an office, a
1115 distribution house, a salesroom or house, a warehouse, or any
1116 other place of business, or owning personal property located in
1117 this state used by another person, or installing personal property
1118 in this state. This definition also includes any person selling
1119 or taking orders for any tangible personal property, either
1120 personally, by mail or through an employee representative,
1121 salesman, commission agent, canvasser, solicitor or independent
1122 contractor or by any other means from within the state. "Person
1123 doing business in this state" also includes any marketplace
1124 facilitator, marketplace seller, or remote seller with sales that
1125 exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in any
1126 consecutive twelve-month period. A sale made through a
1127 marketplace facilitator is a sale of the marketplace facilitator
1128 and not the sale of a marketplace seller for purposes of
1129 determining whether a person exceeds Two Hundred Fifty Thousand
1130 Dollars (\$250,000.00) in sales.

1131 Any person doing business under the terms of this article by
1132 reason of coming under any one or more of the qualifying
1133 provisions listed above shall be considered as doing business on
1134 all transactions involving sales to persons within this state.



1135 (k) "Use" or "consumption" means the first use or
1136 intended use within this state of tangible personal property or
1137 specified digital product and shall include rental or loan by
1138 owners or use by lessees or other persons receiving benefits from
1139 use of the property or product. "Use" or "consumption" shall
1140 include the benefit realized or to be realized by persons
1141 importing or causing to be imported into this state tangible
1142 advertising or sales promotion materials.

1143 (l) "Storage" means keeping tangible personal property
1144 or specified digital product in this state for subsequent use or
1145 consumption in this state.

1146 (m) "Specified digital products" shall have the meaning
1147 ascribed to such term in Section 27-65-26.

1148 (n) "Marketplace facilitator" means any person who
1149 facilitates a retail sale by a seller by:

1150 (i) Listing or advertising for sale by the
1151 retailer in any forum, tangible personal property, services or
1152 digital goods that are subject to tax under this chapter; and

1153 (ii) Either directly or indirectly through
1154 agreements or arrangements with third parties collecting payment
1155 from the customer and transmitting that payment to the retailer
1156 regardless of whether the marketplace provider receives
1157 compensation or other consideration in exchange for its service.

1158 (o) "Marketplace seller" means a seller that makes
1159 sales through any physical or electronic marketplace owned,



1160 operated, or controlled by a marketplace facilitator, even if such
1161 seller would not have been required to collect and remit sales tax
1162 had the sale not been made through such marketplace.

1163 (p) "Remote seller" means a person, other than a
1164 marketplace facilitator, that does not maintain a place of
1165 business in this state and that through a forum sells tangible
1166 personal property, taxable services or specified digital products,
1167 the sale or use of which is subject to the tax imposed by this
1168 chapter.

1169 (q) "Computer software" shall have the meaning ascribed
1170 to such term in Section 6 of this act.

1171 **SECTION 8.** Section 27-67-5, Mississippi Code of 1972, is
1172 amended as follows:

1173 27-67-5. There is hereby levied, assessed and shall be
1174 collected from every person a tax for the privilege of using,
1175 storing or consuming, within this state, any tangible personal
1176 property or specified digital product possession of which is
1177 acquired in any manner.

1178 (a) The use tax hereby imposed and levied shall be
1179 collected at the same rates as imposed under Section 27-65-20, and
1180 Sections 27-65-17, 27-65-18, 27-65-19, 27-65-24, 27-65-25 and
1181 27-65-26 computed on the purchase or sales price, or value, as
1182 defined in this article.

1183 (b) It shall be the duty of the tax collectors of the
1184 several counties, or the commissioner, as the case may be, to



1185 collect, remit and account for the tax on the use of all vehicles
1186 licensed or registered by the State of Mississippi for the first
1187 time, except when the Mississippi use tax was collected by an
1188 authorized out-of-state dealer at the time of purchase, or when
1189 the use thereof was exempt by Section 27-67-7. The tax collector
1190 or the commissioner shall give to the person registering the
1191 vehicle a receipt in a form prescribed and furnished by the
1192 Department of Revenue for the amount of tax collected.

1193 The tax collector or the commissioner is expressly prohibited
1194 from issuing a license tag to any applicant without collecting the
1195 tax levied by this article, unless positive proof is filed,
1196 together with the application for the license tag, that the
1197 Mississippi tax has been paid, or that the sale was exempt by
1198 Section 27-67-7.

1199 Persons not engaging and continuing in business so as to be
1200 registered for payment of sales and/or use tax may pay use tax due
1201 on the first use of boats, airplanes, equipment or other tangible
1202 personal property and specified digital products to county tax
1203 collectors who are hereby authorized to accept such payments on
1204 behalf of the commissioner. Receipts for all such payments shall
1205 be given to taxpayers in a form prescribed and furnished by the
1206 Department of Revenue.

1207 County tax collectors and the commissioner shall be liable
1208 for the tax they are required hereby to collect, and taxes which
1209 are in fact collected under authority of this section; and failure



1210 to properly collect or maintain proper records shall not relieve
1211 them of liability for payment to the commissioner. Deficiencies
1212 in collection or payment shall be assessed against the tax
1213 collector or the commissioner in the same manner and subject to
1214 the same penalties and provisions for appeal as are deficiencies
1215 assessed against taxpayers.

1216 A dealer authorized to collect and remit the tax to the
1217 Department of Revenue shall give to the purchaser a receipt for
1218 the payment of the tax, in a form prescribed and furnished by the
1219 commissioner, which shall serve as proof of payment to the tax
1220 collector of the county in which the license is to be issued.

1221 Each tax collector of the several counties shall, on or
1222 before the twentieth day of each month, file a report with and pay
1223 to the commissioner all funds collected under the provisions of
1224 this article, less a commission of five percent (5%) which shall
1225 be retained by the tax collector as a commission for collecting
1226 such tax and be deposited in the county general fund. The report
1227 required to be filed shall cover all collections made during the
1228 calendar month next preceding the date on which the report is due
1229 and filed.

1230 Any error in the report and remittance to the commissioner
1231 may be adjusted on a subsequent report. If the error was in the
1232 collection by the tax collector, it shall be adjusted through the
1233 tax collector with the taxpayer before credit is allowed by the
1234 commissioner.



1235 All information relating to the collection of use tax by tax
1236 collectors and such records as the commissioner may require shall
1237 be preserved in the tax collector's office for a period of three
1238 (3) years for audit by the commissioner.

1239 Computer software maintained on a server located outside the
1240 state and accessible for use only via the internet is not a
1241 taxable use, storage or consumption under this chapter.

1242 **SECTION 9.** Section 6 of this act shall be codified as a new
1243 section in Title 27, Chapter 65, Mississippi Code of 1972.

1244 **SECTION 10.** Nothing in this act shall affect or defeat any
1245 refund claim, assessment, appeal, suit, right or cause of action
1246 for taxes due or accrued under the laws of this state for any tax
1247 period beginning before the date on which this act becomes
1248 effective, whether such refund claims, assessments, appeals, suits
1249 or actions have been begun or filed before the date on which this
1250 act becomes effective or are begun or filed thereafter; and the
1251 provisions of the tax laws of this state in effect prior to the
1252 effective date of this act are expressly continued in full force,
1253 effect and operation for the purpose of any refund claim,
1254 assessment, appeal, suit, right or cause of action for taxes paid,
1255 due or accrued under the laws of this state for any tax period
1256 beginning before the date on which this act becomes effective, for
1257 the collection and enrollment of liens for any taxes due or
1258 accrued for any tax period beginning before the date on which this
1259 act becomes effective and for the execution of any warrant under



1260 such laws for a tax period beginning before the date on which this
1261 act becomes effective, and for the imposition of any penalties,
1262 forfeitures or claims for failure to comply with such laws in
1263 regard to any tax period beginning prior to the date on which this
1264 act becomes effective.

1265 **SECTION 11.** This act shall take effect and be in force from
1266 and after July 1, 2023.

