

By: Representative Lamar

To: Ways and Means

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 379

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

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

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

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



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

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

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36 withdrawn from the business or stock in trade and is used or  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

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

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

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

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



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

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

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

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

62 (c) Retail sales of prepared meals when:

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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



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

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



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

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

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

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

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

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

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





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

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

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

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

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

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



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

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

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

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

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

248           (5) A marketplace facilitator is relieved of liability under  
249 this section for failure to collect and remit the correct amount



250 of tax under this section to the extent that the failure was due  
251 to incorrect or insufficient information given to the marketplace  
252 facilitator by the marketplace seller, provided that the  
253 marketplace facilitator can demonstrate it made a reasonable  
254 effort to obtain correct and sufficient information from the  
255 marketplace seller. This subsection does not apply if the  
256 marketplace facilitator and the marketplace seller are related.

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

269 ( \* \* \*7) Every person required or authorized to collect the  
270 tax shall add to the sales price of tangible personal property,  
271 services or specified digital products the amount of the tax  
272 imposed on purchaser for the use, storage, or consumption thereof,  
273 and, when so added, the tax shall be a debt from the purchaser to  
274 the seller until paid, and shall be collectible at law in the same



275 manner as other debts. It shall be unlawful for any person to  
276 advertise, hold out, or state to the public or to any customer  
277 that the tax herein imposed will be assumed or absorbed by the  
278 seller or that any part thereof will be refunded. Said tax shall  
279 be stated separately from the sales price on the sales invoice and  
280 shown separately on the seller's records. The purchaser shall pay  
281 the tax to the seller as trustee for and on account of the state.

282         **SECTION 5.** This act shall take effect and be in force from  
283 and after July 1, 2020.

