

By: Representative Lamar

To: Ways and Means

HOUSE BILL NO. 379
(As Sent to Governor)

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; TO SPECIFY THAT THE MARKETPLACE
21 FACILITATOR AND THE MARKETPLACE SELLER ARE NOT PROHIBITED, UNDER
22 CERTAIN CIRCUMSTANCES, FROM CONTRACTUALLY AGREEING TO HAVE THE
23 MARKETPLACE SELLER COLLECT AND REMIT ALL APPLICABLE TAXES AND
24 FEES; TO AMEND SECTION 27-67-31, MISSISSIPPI CODE OF 1972, TO
25 REVISE THE AMOUNT OF STATE USE TAX REVENUE THAT IS DIVERTED TO THE
26 LOCAL SYSTEM BRIDGE REPLACEMENT AND REHABILITATION FUND; AND FOR
27 RELATED PURPOSES.

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

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



31 27-65-7. "Retailer" shall apply to a person making retail
32 sales through vending machines, by maintaining a store, or
33 operating as a transient vendor, or renting or leasing tangible
34 personal property. Retailer also includes persons who facilitate
35 the sale of services or tangible personal property that belongs to a
36 third party.

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

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43 withdrawn from the business or stock in trade and is used or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

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

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



56 through the delivery service or whether the delivery service adds
57 fees or upcharges to the price of the food.

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

60 27-65-9. (1) "Business" shall mean and include all
61 activities or acts engaged in (personal or corporate), for benefit
62 or advantage, either direct or indirect, and not exempting
63 subactivities in connection therewith. Each of such subactivities
64 shall be considered business engaged in, taxable in the class in
65 which it falls.

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

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

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

74 (c) Retail sales of prepared meals when:

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

79 (ii) Payment for the sale is made through the use
80 of a prepaid declining balance account or similar instrument or



81 account issued to such student by the university, college or
82 community or junior college that may be used only to purchase
83 prepared meals.

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

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

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

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

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

101 27-67-3. Whenever used in this article, the words, phrases
102 and terms shall have the meaning ascribed to them as follows:

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



105 (b) "Commissioner" means the Commissioner of Revenue of
106 the Department of Revenue.

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

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

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

126 (f) "Purchase price" or "sales price" means the total
127 amount for which tangible personal property or specified digital
128 product is purchased or sold, valued in money, including
129 installation and service charges, and freight charges to the point



130 of use within this state, without any deduction for cost of
131 property or products sold, expenses or losses, or taxes of any
132 kind except those exempt by the sales tax law. "Purchase price"
133 or "sales price" shall not include cash discounts allowed and
134 taken or merchandise returned by customers when the total sales
135 price is refunded either in cash or by credit, and shall not
136 include amounts allowed for a trade-in of similar property or
137 products. "Purchase price" or "sales price" does not include
138 finance charges, carrying charges or any other addition to the
139 selling price as a result of deferred payments by the purchaser.

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

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



154 shall be the manufactured cost of the property and freight to the
155 place of use in Mississippi.

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

171 (j) "Person doing business in this state," "person
172 maintaining a place of business within this state," or any similar
173 term means any person having within this state an office, a
174 distribution house, a salesroom or house, a warehouse, or any
175 other place of business, or owning personal property located in
176 this state used by another person, or installing personal property
177 in this state. This definition also includes any person selling
178 or taking orders for any tangible personal property, either



179 personally, by mail or through an employee representative,
180 salesman, commission agent, canvasser, solicitor or independent
181 contractor or by any other means from within the state. "Person
182 doing business in this state" also includes any marketplace
183 facilitator, marketplace seller, or remote seller with sales that
184 exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in any
185 consecutive twelve-month period. A sale made through a
186 marketplace facilitator is a sale of the marketplace facilitator
187 and not the sale of a marketplace seller for purposes of
188 determining whether a person exceeds Two Hundred Fifty Thousand
189 Dollars (\$250,000.00) in sales.

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

194 (k) "Use" or "consumption" means the first use or
195 intended use within this state of tangible personal property or
196 specified digital product and shall include rental or loan by
197 owners or use by lessees or other persons receiving benefits from
198 use of the property or product. "Use" or "consumption" shall
199 include the benefit realized or to be realized by persons
200 importing or causing to be imported into this state tangible
201 advertising or sales promotion materials.



202 (l) "Storage" means keeping tangible personal property
203 or specified digital product in this state for subsequent use or
204 consumption in this state.

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

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

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

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

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

222 (p) "Remote seller" means a person, other than a
223 marketplace facilitator, that does not maintain a place of
224 business in this state and that through a forum sells tangible
225 personal property, taxable services or specified digital products,



226 the sale or use of which is subject to the tax imposed by this
227 chapter.

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

230 27-67-11. (1) Every person maintaining a place of business,
231 or doing business, in this state, shall collect the tax imposed by
232 this article from the purchaser and remit the tax to the
233 commissioner as hereinafter provided. Failure to collect the tax
234 from the purchaser shall not relieve the seller of liability for
235 payment of the tax.

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

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

240 (b) Obligation of a seller, when the seller is
241 transacting business in the state and tax is collected on the
242 transaction, to remit all state and local taxes on any applicable
243 transaction in which the seller provides goods or furnishes
244 services within the state.

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

247 (3) The department shall audit a marketplace facilitator
248 solely for sales made by marketplace sellers and facilitated by
249 the marketplace facilitator. The department shall not audit
250 marketplace sellers for sales facilitated by a marketplace



251 facilitator except to the extent the marketplace facilitator seeks
252 relief from liability under subsection (5) of this section.

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

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

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

273 (a) Has annual United States gross sales over One
274 Billion Dollars (\$1,000,000,000.00), including the gross sales of
275 any related entities, and in the case of franchised entities,



276 including the combined sales of all franchisees of a single
277 franchisor;

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

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

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

298 (* * *8) Every person required or authorized to collect the
299 tax shall add to the sales price of tangible personal property,
300 services or specified digital products the amount of the tax



301 imposed on purchaser for the use, storage, or consumption thereof,
302 and, when so added, the tax shall be a debt from the purchaser to
303 the seller until paid, and shall be collectible at law in the same
304 manner as other debts. It shall be unlawful for any person to
305 advertise, hold out, or state to the public or to any customer
306 that the tax herein imposed will be assumed or absorbed by the
307 seller or that any part thereof will be refunded. Said tax shall
308 be stated separately from the sales price on the sales invoice and
309 shown separately on the seller's records. The purchaser shall pay
310 the tax to the seller as trustee for and on account of the state.

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

313 27-67-31. All administrative provisions of the sales tax
314 law, and amendments thereto, including those which fix damages,
315 penalties and interest for failure to comply with the provisions
316 of said sales tax law, and all other requirements and duties
317 imposed upon taxpayer, shall apply to all persons liable for use
318 taxes under the provisions of this article. The commissioner
319 shall exercise all power and authority and perform all duties with
320 respect to taxpayers under this article as are provided in said
321 sales tax law, except where there is conflict, then the provisions
322 of this article shall control.

323 The commissioner may require transportation companies to
324 permit the examination of waybills, freight bills, or other



325 documents covering shipments of tangible personal property into
326 this state.

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

331 (a) On or before July 15, 1994, through July 15, 2000,
332 and each succeeding month thereafter, two and two hundred
333 sixty-six one-thousandths percent (2.266%) of the total use tax
334 revenue collected during the preceding month under the provisions
335 of this article shall be deposited in the School Ad Valorem Tax
336 Reduction Fund created pursuant to Section 37-61-35. On or before
337 August 15, 2000, and each succeeding month thereafter, two and two
338 hundred sixty-six one-thousandths percent (2.266%) of the total
339 use tax revenue collected during the preceding month under the
340 provisions of this chapter shall be deposited into the School Ad
341 Valorem Tax Reduction Fund created under Section 37-61-35 until
342 such time that the total amount deposited into the fund during a
343 fiscal year equals Four Million Dollars (\$4,000,000.00).
344 Thereafter, the amounts diverted under this paragraph (a) during
345 the fiscal year in excess of Four Million Dollars (\$4,000,000.00)
346 shall be deposited into the Education Enhancement Fund created
347 under Section 37-61-33 for appropriation by the Legislature as
348 other education needs and shall not be subject to the percentage
349 appropriation requirements set forth in Section 37-61-33.



350 (b) On or before July 15, 1994, and each succeeding
351 month thereafter, nine and seventy-three one-thousandths percent
352 (9.073%) of the total use tax revenue collected during the
353 preceding month under the provisions of this article shall be
354 deposited into the Education Enhancement Fund created pursuant to
355 Section 37-61-33.

356 (c) On or before July 15, 1997, and on or before the
357 fifteenth day of each succeeding month thereafter, the revenue
358 collected under the provisions of this article imposed and levied
359 as a result of Section 27-65-17(2) and the corresponding levy in
360 Section 27-65-23 on the rental or lease of private carriers of
361 passengers and light carriers of property as defined in Section
362 27-51-101 shall be deposited into the Motor Vehicle Ad Valorem Tax
363 Reduction Fund created pursuant to Section 27-51-105.

364 (d) On or before July 15, 1997, and on or before the
365 fifteenth day of each succeeding month thereafter and after the
366 deposits required by paragraphs (a) and (b) of this section are
367 made, the remaining revenue collected under the provisions of this
368 article imposed and levied as a result of Section 27-65-17(1) and
369 the corresponding levy in Section 27-65-23 on the rental or lease
370 of private carriers of passengers and light carriers of property
371 as defined in Section 27-51-101 shall be deposited into the Motor
372 Vehicle Ad Valorem Tax Reduction Fund created pursuant to Section
373 27-51-105.



374 (e) On or before August 15, 2019, and each succeeding
375 month thereafter through July 15, 2020, three and three-fourths
376 percent (3-3/4%) of the total use tax revenue collected during the
377 preceding month under the provisions of this article shall be
378 deposited into the special fund created in Section 27-67-35(1).
379 On or before August 15, 2020, and each succeeding month thereafter
380 through July 15, 2021, seven and one-half percent (7-1/2%) of the
381 total use tax revenue collected during the preceding month under
382 the provisions of this article shall be deposited into the special
383 fund created in Section 27-67-35(1). On or before August 15,
384 2021, and each succeeding month thereafter through July 15, 2022,
385 eleven and one-fourth percent (11-1/4%) of the total use tax
386 revenue collected during the preceding month under the provisions
387 of this article shall be deposited into the special fund created
388 in Section 27-67-35(1). On or before August 15, 2022, and each
389 succeeding month thereafter, fifteen percent (15%) of the total
390 use tax revenue collected during the preceding month under the
391 provisions of this article shall be deposited into the special
392 fund created in Section 27-67-35(1).

393 (f) On or before August 15, 2019, and each succeeding
394 month thereafter through July 15, 2020, three and three-fourths
395 percent (3-3/4%) of the total use tax revenue collected during the
396 preceding month under the provisions of this article shall be
397 deposited into the special fund created in Section 27-67-35(2).
398 On or before August 15, 2020, and each succeeding month thereafter



399 through July 15, 2021, seven and one-half percent (7-1/2%) of the
400 total use tax revenue collected during the preceding month under
401 the provisions of this article shall be deposited into the special
402 fund created in Section 27-67-35(2). On or before August 15,
403 2021, and each succeeding month thereafter through July 15, 2022,
404 eleven and one-fourth percent (11-1/4%) of the total use tax
405 revenue collected during the preceding month under the provisions
406 of this article shall be deposited into the special fund created
407 in Section 27-67-35(2). On or before August 15, 2022, and each
408 succeeding month thereafter, fifteen percent (15%) of the total
409 use tax revenue collected during the preceding month under the
410 provisions of this article shall be deposited into the special
411 fund created in Section 27-67-35(2).

412 (g) On or before August 15, 2019, and each succeeding
413 month thereafter through July 15, 2020, Four Hundred Sixteen
414 Thousand Six Hundred Sixty-six Dollars and Sixty-seven Cents
415 (\$416,666.67) or one and one-fourth percent (1-1/4%) of the total
416 use tax revenue collected during the preceding month under the
417 provisions of this article, whichever is the greater amount, shall
418 be deposited into the Local System Bridge Replacement and
419 Rehabilitation Fund created in Section 65-37-13. On or before
420 August 15, 2020, and each succeeding month thereafter through July
421 15, 2021, Eight Hundred Thirty-three Thousand Three Hundred
422 Thirty-three Dollars and Thirty-four Cents (\$833,333.34) or two
423 and one-half percent (2-1/2%) of the total use tax revenue



424 collected during the preceding month under the provisions of this
425 article, whichever is the greater amount, shall be deposited into
426 the Local System Bridge Replacement and Rehabilitation Fund
427 created in Section 65-37-13. On or before August 15, 2021, and
428 each succeeding month thereafter through July 15, 2022, One
429 Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) or
430 three and three-fourths percent (3-3/4%) of the total use tax
431 revenue collected during the preceding month under the provisions
432 of this article, whichever is the greater amount, shall be
433 deposited into the Local System Bridge Replacement and
434 Rehabilitation Fund created in Section 65-37-13. On or before
435 August 15, 2022, and each succeeding month thereafter, One Million
436 Six Hundred Sixty-six Thousand Six Hundred Sixty-six Dollars and
437 Sixty-seven Cents (\$1,666,666.67) or five percent (5%) of the
438 total use tax revenue collected during the preceding month under
439 the provisions of this article, whichever is the greater amount,
440 shall be deposited into the Local System Bridge Replacement and
441 Rehabilitation Fund created in Section 65-37-13.

442 (h) On or before August 15, 2020, and each succeeding
443 month thereafter through July 15, 2022, One Million Dollars
444 (\$1,000,000.00) of the total use tax revenue collected during the
445 preceding month under the provisions of this article shall be
446 deposited into the Local System Bridge Replacement and
447 Rehabilitation Fund created in Section 65-37-13. Amounts
448 deposited into the Local System Bridge Replacement and



449 Rehabilitation Fund under this paragraph (h) shall be in addition
450 to amounts deposited into the fund under paragraph (g) of this
451 section.

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

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

