

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 \* \* \* ~~5. A tax equal to seven percent (7%) of~~  
396 ~~the gross income received from all charges for products delivered~~  
397 ~~electronically, including, but not limited to, software, music,~~  
398 ~~games, reading materials or ring tones.~~

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

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

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





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

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

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

435 b. Installation or maintenance of wiring  
436 or equipment on a customer's premises;

437 c. Tangible personal property;

438 d. Advertising, including, but not  
439 limited to, directory advertising;

440 e. Billing and collection services  
441 provided to third parties;

442 f. Internet access service;



443 g. Radio and television audio and video  
444 programming services regardless of the medium, including the  
445 furnishing of transmission, conveyance and routing of such  
446 services by the programming service provider. Radio and  
447 television audio and video programming services shall include, but  
448 not be limited to, cable service as defined in 47 USCS 522(6) and  
449 audio and video programming services delivered by commercial  
450 mobile radio service providers, as defined in 47 CFR 20.3;

451 h. Ancillary services; or

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

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

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



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

471                                   c. "Directory assistance" means an  
472 ancillary service of providing telephone number information and/or  
473 address information.

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

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

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

489                                   4. "Interstate" means a telecommunications  
490 service that originates in one (1) United States state or United



491 States territory or possession, and terminates in a different  
492 United States state or United States territory or possession.

493                   5. "International" means a telecommunications  
494 service that originates or terminates in the United States and  
495 terminates or originates outside the United States, respectively.

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

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

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

504                   b. Each level of taxing jurisdiction  
505 where the call either originates or terminates and in which the  
506 service address is also located.

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

512                   3. The sale of the following  
513 telecommunications services shall be sourced to each level of  
514 taxing jurisdiction as follows:



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

520                                   A. A home service provider shall be  
521 responsible for obtaining and maintaining the customer's place of  
522 primary use. The home service provider shall be entitled to rely  
523 on the applicable residential or business street address supplied  
524 by such customer, if the home service provider's reliance is in  
525 good faith; and the home service provider shall be held harmless  
526 from liability for any additional taxes based on a different  
527 determination of the place of primary use for taxes that are  
528 customarily passed on to the customer as a separate itemized  
529 charge. A home service provider shall be allowed to treat the  
530 address used for purposes of the tax levied by this chapter for  
531 any customer under a service contract in effect on August 1, 2002,  
532 as that customer's place of primary use for the remaining term of  
533 such service contract or agreement, excluding any extension or  
534 renewal of such service contract or agreement. Month-to-month  
535 services provided after the expiration of a contract shall be  
536 treated as an extension or renewal of such contract or agreement.  
537                                   B. If the commissioner determines  
538 that the address used by a home service provider as a customer's  
539 place of primary use does not meet the definition of the term



540 "place of primary use" as defined in subitem a.A. of this item 3,  
541 the commissioner shall give binding notice to the home service  
542 provider to change the place of primary use on a prospective basis  
543 from the date of notice of determination; however, the customer  
544 shall have the opportunity, prior to such notice of determination,  
545 to demonstrate that such address satisfies the definition.

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

551 b. A sale of postpaid calling service is  
552 sourced to the origination point of the telecommunications signal  
553 as first identified by either:

554 A. The seller's telecommunications  
555 system; or

556 B. Information received by the  
557 seller from its service provider, where the system used to  
558 transport such signals is not that of the seller.

559 c. A sale of a prepaid calling service  
560 or prepaid wireless calling service shall be subject to the tax  
561 imposed by this paragraph if the sale takes place in this state.  
562 If the customer physically purchases a prepaid calling service or  
563 prepaid wireless calling service at the vendor's place of  
564 business, the sale is deemed to take place at the vendor's place



565 of business. If the customer does not physically purchase the  
566 service at the vendor's place of business, the sale of a prepaid  
567 calling card or prepaid wireless calling card is deemed to take  
568 place at the first of the following locations that applies to the  
569 sale:

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

572                   B. The customer's billing address;

573                   C. Any other address of the  
574 customer that is known by the vendor; or

575                   D. The address of the vendor, or  
576 alternatively, in the case of a prepaid wireless calling service,  
577 the location associated with the mobile telephone number.

578                   4. A sale of a private communication service  
579 is sourced as follows:

580                   a. Service for a separate charge related  
581 to a customer channel termination point is sourced to each level  
582 of jurisdiction in which such customer channel termination point  
583 is located.

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



589 c. Service for segments of a channel  
590 between two (2) customer channel termination points located in  
591 different jurisdictions and which segments of a channel are  
592 separately charged is sourced fifty percent (50%) in each level of  
593 jurisdiction in which the customer channel termination points are  
594 located.

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

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

604 (vi) For purposes of subparagraph (v) of this  
605 paragraph (d):

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

610 2. "Call-by-call basis" means any method of  
611 charging for telecommunications services where the price is  
612 measured by individual calls.





613                   3. "Communications channel" means a physical  
614 or virtual path of communications over which signals are  
615 transmitted between or among customer channel termination points.

616                   4. "Customer" means the person or entity that  
617 contracts with the seller of telecommunications services. If the  
618 end user of telecommunications services is not the contracting  
619 party, the end user of the telecommunications service is the  
620 customer of the telecommunications service. Customer does not  
621 include a reseller of telecommunications service or for mobile  
622 telecommunications service of a serving carrier under an agreement  
623 to serve the customer outside the home service provider's licensed  
624 service area.

625                   5. "Customer channel termination point" means  
626 the location where the customer either inputs or receives the  
627 communications.

628                   6. "End user" means the person who utilizes  
629 the telecommunications service. In the case of an entity, "end  
630 user" means the individual who utilizes the service on behalf of  
631 the entity.

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

635                   8. "Mobile telecommunications service" has  
636 the meaning ascribed to such term in Section 124(7) of Public Law  
637 106-252 (Mobile Telecommunications Sourcing Act).



638                   9. "Place of primary use" means the street  
639 address representative of where the customer's use of the  
640 telecommunications service primarily occurs, which must be the  
641 residential street address or the primary business street address  
642 of the customer. In the case of mobile telecommunications  
643 services, the place of primary use must be within the licensed  
644 service area of the home service provider.

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

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

661                   12. "Prepaid wireless calling service" means  
662 a telecommunications service that provides the right to utilize



663 mobile wireless service as well as other nontelecommunications  
664 services, including the download of digital products delivered  
665 electronically, content and ancillary service, which must be paid  
666 for in advance that is sold in predetermined units or dollars of  
667 which the number declines with use in a known amount.

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

676                   14. "Service address" means:

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

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



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

690 (vii) 1. For purposes of this subparagraph (vii),  
691 "bundled transaction" means a transaction that consists of  
692 distinct and identifiable properties or services which are sold  
693 for a single nonitemized price but which are treated differently  
694 for tax purposes.

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

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



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

716 b. Based on a reasonable allocation  
717 methodology approved by the department.

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

732 (2) Persons making sales to consumers of electricity,  
733 current, power, natural gas, liquefied petroleum gas or other fuel  
734 for residential heating, lighting or other residential  
735 noncommercial or nonagricultural use or sales of potable water for  
736 residential, noncommercial or nonagricultural use shall indicate



737 on each statement rendered to customers that such charges are  
738 exempt from sales taxes.

739 (3) There is hereby levied, assessed and shall be paid on  
740 transportation charges on shipments moving between points within  
741 this state when paid directly by the consumer, a tax equal to the  
742 rate applicable to the sale of the property being transported.  
743 Such tax shall be reported and paid directly to the Department of  
744 Revenue by the consumer.

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

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

751 Air-conditioning installation or repairs;

752 Automobile, motorcycle, boat or any other vehicle  
753 repairing or servicing;

754 Billiards, pool or domino parlors;

755 Bowling or tenpin alleys;

756 Burglar and fire alarm systems or services;

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

758 Computer software \* \* \* ~~sales and services~~ actually  
759 performed within this state;

760 Cotton compresses or cotton warehouses;



761 Custom creosoting or treating, custom planing, custom  
762 sawing;  
763 Custom meat processing;  
764 Electricians, electrical work, wiring, all repairs or  
765 installation of electrical equipment;  
766 Elevator or escalator installing, repairing or  
767 servicing;  
768 Film developing or photo finishing;  
769 Foundries, machine or general repairing;  
770 Furniture repairing or upholstering;  
771 Grading, excavating, ditching, dredging or landscaping;  
772 Hotels (as defined in Section 41-49-3), motels, tourist  
773 courts or camps, trailer parks;  
774 Insulating services or repairs;  
775 Jewelry or watch repairing;  
776 Laundering, cleaning, pressing or dyeing;  
777 Marina services;  
778 Mattress renovating;  
779 Office and business machine repairing;  
780 Parking garages and lots;  
781 Plumbing or pipe fitting;  
782 Public storage warehouses (There shall be no tax levied  
783 on gross income of a public storage warehouse derived from the  
784 temporary storage of tangible personal property in this state  
785 pending shipping or mailing of the property to another state.);



786 Refrigerating equipment repairs;  
787 Radio or television installing, repairing, or servicing;  
788 Renting or leasing personal property used within this  
789 state;  
790 Services performed in connection with geophysical  
791 surveying, exploring, developing, drilling, producing,  
792 distributing, or testing of oil, gas, water and other mineral  
793 resources;  
794 Shoe repairing;  
795 Storage lockers;  
796 Telephone answering or paging services;  
797 Termite or pest control services;  
798 Tin and sheet metal shops;  
799 TV cable systems, subscription TV services, and other  
800 similar activities;  
801 Vulcanizing, repairing or recapping of tires or tubes;  
802 Welding; and  
803 Woodworking or woodu-turning shops.

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

808 Income from services taxed herein performed on materials for  
809 use in track or track structures to a railroad whose rates are  
810 fixed by the Interstate Commerce Commission or the Mississippi





811 Public Service Commission shall be taxed at the rate of three  
812 percent (3%).

813 Income from renting or leasing tangible personal property  
814 used within this state shall be taxed at the same rates as sales  
815 of the same property.

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

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

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

831 When a taxpayer performs \* \* \* ~~unitary~~ services covered by  
832 this section, which are performed both in intrastate and  
833 interstate commerce, \* \* \* ~~the commissioner is hereby invested~~  
834 ~~with authority to formulate in each particular case and to fix for~~  
835 ~~such taxpayer in each instance~~ the taxpayer may utilize any



836 reasonable formulae of apportionment which will apportion to this  
837 state, for taxation, that portion of the services which are  
838 performed within the State of Mississippi.

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

841 27-65-93. (1) The commissioner shall, from time to time,  
842 promulgate rules and regulations, not inconsistent with the  
843 provisions of the sales tax law, for making returns and for the  
844 ascertainment, assessment and collection of the tax imposed by the  
845 sales tax law as he may deem necessary to enforce its provisions;  
846 and, upon request, he shall furnish any taxpayer with a copy of  
847 the rules and regulations.

848 (2) All forms, necessary for the enforcement of the sales  
849 tax law, shall be prescribed, printed and furnished by the  
850 commissioner.

851 (3) The commissioner may adopt rules and regulations  
852 providing for the issuance of permits to manufacturers, utilities,  
853 construction contractors, companies receiving bond financing  
854 through the Mississippi Business Finance Corporation or the  
855 Mississippi Development Authority, and other taxpayers as  
856 determined by the commissioner, and the commissioner shall adopt  
857 rules and regulations providing for the issuance of a permit to  
858 any qualified business or industry, which is certified as such by  
859 the Mississippi Development Authority pursuant to the Mississippi  
860 Flexible Tax Incentive Act and awarded any mFlex tax incentive



861 amount for such qualified business's or industry's qualified  
862 economic development project, certified as such by the Mississippi  
863 Development Authority pursuant to the Mississippi Flexible Tax  
864 Incentive Act, to purchase tangible personal property taxed under  
865 Section 27-65-17, items taxed under Section 27-65-18, items taxed  
866 under Section 27-65-19, services taxed under Section 27-65-23,  
867 items taxed under Section 27-65-24, and items taxed under Section  
868 27-65-26 without the payment to the vendor of the tax imposed by  
869 the sales and use tax laws, and providing for persons to report  
870 and pay the tax directly to the commissioner in instances where  
871 the commissioner determines that these provisions will facilitate  
872 and expedite the collection of the tax at the proper rates which  
873 may be due on purchases by the permittee. Under the provisions of  
874 this chapter, the vendor is relieved of collecting and remitting  
875 the taxes specified hereunder and the person holding the permit  
876 shall become liable for such taxes instead of the seller. The  
877 full enforcement provisions of the sales tax law shall apply in  
878 the collection of the tax from the permittee.

879 The commissioner shall adopt rules and regulations providing  
880 for the issuance of a permit to and at the election of purchasers  
881 and users of computer software or computer software services to  
882 purchase such items and services without the payment to the vendor  
883 of the tax imposed by the sales and use tax laws, and providing  
884 for persons to report and pay the tax directly to the  
885 commissioner. Under the provisions of this chapter, the vendor is



886 relieved of collecting and remitting the taxes specified hereunder  
887 and the person holding the permit shall become liable for such  
888 taxes instead of the seller. The full enforcement provisions of  
889 the sales tax law shall apply in the collection of the tax from  
890 the permittee.

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

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

905 (b) "Computer software service" shall mean the  
906 technical design and programming of computer software and includes  
907 installing, configuring, debugging, modifying, testing, or  
908 troubleshooting computer hardware, networks, programs or computer  
909 software. Computer software service does not include the  
910 following nonexclusive list of services:



911 (i) The use of or right to use physical computer  
912 equipment, infrastructure, servers, platforms and other tangible  
913 computer devices, including, but not limited to, items commonly  
914 referred to as "platform as a service" or "infrastructure as a  
915 service";

916 (ii) Information and data processing services;

917 (iii) Services that use a computer, computer  
918 equipment, or computer software as a tool to perform or complete  
919 that service;

920 (iv) Internet access services or charges;

921 (v) Payment processing or banking services;

922 (vi) Real estate listing or pricing services;

923 (vii) Electronic advertising and marketing  
924 services; and

925 (viii) Social media services.

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

934 (i) Check or payment processing services;

935 (ii) Image processing services;



- 936 (iii) Form processing services;
- 937 (iv) Billing services;
- 938 (v) Transcription services;
- 939 (vi) Word processing services;
- 940 (vii) Survey processing services;
- 941 (viii) Payroll processing services;
- 942 (ix) Claim processing services;
- 943 (x) Research database services; and
- 944 (xi) Accounting and tax compliance services.

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



961 commissioner shall challenge or contest the allocation method  
962 utilized by a seller, service provider, user, or consumer, the  
963 commissioner must establish by a preponderance of the evidence (a)  
964 that the allocation method utilized by the seller, service  
965 provider, user, or consumer was not a reasonable method of  
966 allocation, and (b) that the allocation method proposed by the  
967 commissioner is the most reasonable of all available or  
968 alternative methods.

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

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

982 (i) Based on the specific identification of the  
983 locations within and without Mississippi that the software is  
984 loaded, stored or maintained;



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

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

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

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

996 (i) Based on the specific amount of time spent by  
997 each person performing the services while physically within the  
998 state; or

999 (ii) Based on a ratio calculated by reference to  
1000 the actual time spent within and without Mississippi by all  
1001 persons performing the services.

1002 If none of the above safe harbor allocation methods fairly  
1003 reflect the allocation of taxable computer software or computer  
1004 software services to the state, the seller, service provider, user  
1005 or consumer may make such allocation based on the best information  
1006 available to such person if properly supported by the books and  
1007 records of the seller, service provider, user or consumer. If the  
1008 commissioner shall challenge or contest the allocation method  
1009 utilized by a seller, service provider, user or consumer, the





1010 commissioner must establish by a preponderance of the evidence 1.  
1011 that the allocation method utilized by the seller, service  
1012 provider, user, or consumer was not a reasonable method of  
1013 allocation, and 2. that the allocation method proposed by the  
1014 commissioner is the most reasonable of all available or  
1015 alternative methods.

1016 (4) Notwithstanding any other provision in this chapter or  
1017 Title 27, Chapter 67, Mississippi Code of 1972, and for purposes  
1018 of the tax levied in this chapter and the tax levied in Chapter  
1019 67, Mississippi Code of 1972, computer software or computer  
1020 software services provided by one legal entity to another commonly  
1021 owned, related or affiliated entity shall be treated as nontaxable  
1022 transfers between different segments of one (1) legal entity, with  
1023 proper credit allowed for Mississippi sales or use tax paid and/or  
1024 credit for sales or use tax paid to another state as provided in  
1025 this section or in Section 27-67-7, regardless of which affiliated  
1026 entity paid the sales or use tax for which credit is taken.

1027 Nothing in this subsection shall be interpreted to exclude from  
1028 taxation the purchase or payment by such organization to a third  
1029 party seller or provider for any computer software or computer  
1030 software services otherwise taxable under this chapter or Title  
1031 27, Chapter 67, Mississippi Code of 1972.

1032 (5) A taxpayer, upon proof that a sales or use tax was paid  
1033 to another state or local taxing jurisdiction on any computer  
1034 software or computer software service that is taxable under this



1035 chapter or Title 27, Chapter 67, Mississippi Code of 1972, shall  
1036 be allowed a credit against the tax imposed under this chapter or  
1037 Title 27, Chapter 67, Mississippi Code of 1972, on such computer  
1038 software or computer software service to the extent that the  
1039 amount of the other tax was actually paid in the other state or  
1040 local taxing jurisdiction, and to the extent that the rate of  
1041 sales or use tax imposed by and paid in the other state or local  
1042 taxing jurisdiction does not exceed the rate of sales or use tax  
1043 imposed under this chapter or Title 27, Chapter 67, Mississippi  
1044 Code of 1972.

1045         **SECTION 7.** Section 27-67-3, Mississippi Code of 1972, is  
1046 amended as follows:

1047             27-67-3. Whenever used in this article, the words, phrases  
1048 and terms shall have the meaning ascribed to them as follows:

1049                 (a) "Tax Commission" or "department" means the  
1050 Department of Revenue of the State of Mississippi.

1051                 (b) "Commissioner" means the Commissioner of Revenue of  
1052 the Department of Revenue.

1053                 (c) "Person" means any individual, firm, partnership,  
1054 joint venture, association, corporation, estate, trust, receiver,  
1055 syndicate or any other group or combination acting as a unit and  
1056 includes the plural as well as the singular in number. "Person"  
1057 shall also include husband or wife, or both, where joint benefits  
1058 are derived from the operation of a business taxed hereunder or



1059 where joint benefits are derived from the use of property taxed  
1060 hereunder.

1061 (d) "Taxpayer" means any person liable for the payment  
1062 of any tax hereunder, or liable for the collection and payment of  
1063 the tax.

1064 (e) "Sale" or "purchase" means the exchange of  
1065 properties for money or other consideration, and the barter of  
1066 properties or products. Every closed transaction by which title  
1067 to, or possession of, tangible personal property or specified  
1068 digital products passes shall constitute a taxable event. A  
1069 transaction whereby the possession of property or products is  
1070 transferred but the seller retains title as security for payment  
1071 of the selling price shall be deemed a sale.

1072 (f) "Purchase price" or "sales price" means the total  
1073 amount for which tangible personal property or specified digital  
1074 product is purchased or sold, valued in money, including  
1075 installation and service charges, and freight charges to the point  
1076 of use within this state, without any deduction for cost of  
1077 property or products sold, expenses or losses, or taxes of any  
1078 kind except those exempt by the sales tax law. "Purchase price"  
1079 or "sales price" shall not include cash discounts allowed and  
1080 taken or merchandise returned by customers when the total sales  
1081 price is refunded either in cash or by credit, and shall not  
1082 include amounts allowed for a trade-in of similar property or  
1083 products. "Purchase price" or "sales price" does not include



1084 finance charges, carrying charges or any other addition to the  
1085 selling price as a result of deferred payments by the purchaser.

1086 (g) "Lease" or "rent" means any agreement entered into  
1087 for a consideration that transfers possession or control of  
1088 tangible personal property or specified digital products to a  
1089 person for use within this state.

1090 (h) "Value" means the estimated or assessed monetary  
1091 worth of a thing or property. The value of property or products  
1092 transferred into this state for sales promotion or advertising  
1093 shall be an amount not less than the cost paid by the transferor  
1094 or donor. The value of property or products which have been used  
1095 in another state shall be determined by its cost less straight  
1096 line depreciation provided that value shall never be less than  
1097 twenty percent (20%) of the cost or other method acceptable to the  
1098 commissioner. On property or products imported by the  
1099 manufacturer thereof for rental or lease within this state, value  
1100 shall be the manufactured cost of the property and freight to the  
1101 place of use in Mississippi.

1102 (i) "Tangible personal property" means personal  
1103 property perceptible to the human senses or by chemical analysis,  
1104 as opposed to real property or intangibles. "Tangible personal  
1105 property" shall include printed, mimeographed, multigraphed  
1106 matter, or material reproduced in any other manner, and books,  
1107 catalogs, manuals, publications or similar documents covering the  
1108 services of collecting, compiling or analyzing information of any



1109 kind or nature. However, reports representing the work of persons  
1110 such as lawyers, accountants, engineers and similar professionals  
1111 shall not be included. "Tangible personal property" shall also  
1112 include tangible advertising or sales promotion materials such as,  
1113 but not limited to, displays, brochures, signs, catalogs, price  
1114 lists, point of sale advertising materials and technical manuals.  
1115 Tangible personal property shall also include computer  
1116 software \* \* \* ~~programs.~~

1117 (j) "Person doing business in this state," "person  
1118 maintaining a place of business within this state," or any similar  
1119 term means any person having within this state an office, a  
1120 distribution house, a salesroom or house, a warehouse, or any  
1121 other place of business, or owning personal property located in  
1122 this state used by another person, or installing personal property  
1123 in this state. This definition also includes any person selling  
1124 or taking orders for any tangible personal property, either  
1125 personally, by mail or through an employee representative,  
1126 salesman, commission agent, canvasser, solicitor or independent  
1127 contractor or by any other means from within the state. "Person  
1128 doing business in this state" also includes any marketplace  
1129 facilitator, marketplace seller, or remote seller with sales that  
1130 exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in any  
1131 consecutive twelve-month period. A sale made through a  
1132 marketplace facilitator is a sale of the marketplace facilitator  
1133 and not the sale of a marketplace seller for purposes of



1134 determining whether a person exceeds Two Hundred Fifty Thousand  
1135 Dollars (\$250,000.00) in sales.

1136 Any person doing business under the terms of this article by  
1137 reason of coming under any one or more of the qualifying  
1138 provisions listed above shall be considered as doing business on  
1139 all transactions involving sales to persons within this state.

1140 (k) "Use" or "consumption" means the first use or  
1141 intended use within this state of tangible personal property or  
1142 specified digital product and shall include rental or loan by  
1143 owners or use by lessees or other persons receiving benefits from  
1144 use of the property or product. "Use" or "consumption" shall  
1145 include the benefit realized or to be realized by persons  
1146 importing or causing to be imported into this state tangible  
1147 advertising or sales promotion materials.

1148 (l) "Storage" means keeping tangible personal property  
1149 or specified digital product in this state for subsequent use or  
1150 consumption in this state.

1151 (m) "Specified digital products" shall have the meaning  
1152 ascribed to such term in Section 27-65-26.

1153 (n) "Marketplace facilitator" means any person who  
1154 facilitates a retail sale by a seller by:

1155 (i) Listing or advertising for sale by the  
1156 retailer in any forum, tangible personal property, services or  
1157 digital goods that are subject to tax under this chapter; and



1158 (ii) Either directly or indirectly through  
1159 agreements or arrangements with third parties collecting payment  
1160 from the customer and transmitting that payment to the retailer  
1161 regardless of whether the marketplace provider receives  
1162 compensation or other consideration in exchange for its service.

1163 (o) "Marketplace seller" means a seller that makes  
1164 sales through any physical or electronic marketplace owned,  
1165 operated, or controlled by a marketplace facilitator, even if such  
1166 seller would not have been required to collect and remit sales tax  
1167 had the sale not been made through such marketplace.

1168 (p) "Remote seller" means a person, other than a  
1169 marketplace facilitator, that does not maintain a place of  
1170 business in this state and that through a forum sells tangible  
1171 personal property, taxable services or specified digital products,  
1172 the sale or use of which is subject to the tax imposed by this  
1173 chapter.

1174 (q) "Computer software" shall have the meaning ascribed  
1175 to such term in Section 6 of this act.

1176 **SECTION 8.** Section 27-67-5, Mississippi Code of 1972, is  
1177 amended as follows:

1178 27-67-5. There is hereby levied, assessed and shall be  
1179 collected from every person a tax for the privilege of using,  
1180 storing or consuming, within this state, any tangible personal  
1181 property or specified digital product possession of which is  
1182 acquired in any manner.



1183           (a) The use tax hereby imposed and levied shall be  
1184 collected at the same rates as imposed under Section 27-65-20, and  
1185 Sections 27-65-17, 27-65-18, 27-65-19, 27-65-24, 27-65-25 and  
1186 27-65-26 computed on the purchase or sales price, or value, as  
1187 defined in this article.

1188           (b) It shall be the duty of the tax collectors of the  
1189 several counties, or the commissioner, as the case may be, to  
1190 collect, remit and account for the tax on the use of all vehicles  
1191 licensed or registered by the State of Mississippi for the first  
1192 time, except when the Mississippi use tax was collected by an  
1193 authorized out-of-state dealer at the time of purchase, or when  
1194 the use thereof was exempt by Section 27-67-7. The tax collector  
1195 or the commissioner shall give to the person registering the  
1196 vehicle a receipt in a form prescribed and furnished by the  
1197 Department of Revenue for the amount of tax collected.

1198           The tax collector or the commissioner is expressly prohibited  
1199 from issuing a license tag to any applicant without collecting the  
1200 tax levied by this article, unless positive proof is filed,  
1201 together with the application for the license tag, that the  
1202 Mississippi tax has been paid, or that the sale was exempt by  
1203 Section 27-67-7.

1204           Persons not engaging and continuing in business so as to be  
1205 registered for payment of sales and/or use tax may pay use tax due  
1206 on the first use of boats, airplanes, equipment or other tangible  
1207 personal property and specified digital products to county tax





1208 collectors who are hereby authorized to accept such payments on  
1209 behalf of the commissioner. Receipts for all such payments shall  
1210 be given to taxpayers in a form prescribed and furnished by the  
1211 Department of Revenue.

1212 County tax collectors and the commissioner shall be liable  
1213 for the tax they are required hereby to collect, and taxes which  
1214 are in fact collected under authority of this section; and failure  
1215 to properly collect or maintain proper records shall not relieve  
1216 them of liability for payment to the commissioner. Deficiencies  
1217 in collection or payment shall be assessed against the tax  
1218 collector or the commissioner in the same manner and subject to  
1219 the same penalties and provisions for appeal as are deficiencies  
1220 assessed against taxpayers.

1221 A dealer authorized to collect and remit the tax to the  
1222 Department of Revenue shall give to the purchaser a receipt for  
1223 the payment of the tax, in a form prescribed and furnished by the  
1224 commissioner, which shall serve as proof of payment to the tax  
1225 collector of the county in which the license is to be issued.

1226 Each tax collector of the several counties shall, on or  
1227 before the twentieth day of each month, file a report with and pay  
1228 to the commissioner all funds collected under the provisions of  
1229 this article, less a commission of five percent (5%) which shall  
1230 be retained by the tax collector as a commission for collecting  
1231 such tax and be deposited in the county general fund. The report  
1232 required to be filed shall cover all collections made during the



1233 calendar month next preceding the date on which the report is due  
1234 and filed.

1235 Any error in the report and remittance to the commissioner  
1236 may be adjusted on a subsequent report. If the error was in the  
1237 collection by the tax collector, it shall be adjusted through the  
1238 tax collector with the taxpayer before credit is allowed by the  
1239 commissioner.

1240 All information relating to the collection of use tax by tax  
1241 collectors and such records as the commissioner may require shall  
1242 be preserved in the tax collector's office for a period of three  
1243 (3) years for audit by the commissioner.

1244 Computer software maintained on a server located outside the  
1245 state and accessible for use only via the internet is not a  
1246 taxable use, storage or consumption under this chapter.

1247 **SECTION 9.** Section 6 of this act shall be codified as a new  
1248 section in Title 27, Chapter 65, Mississippi Code of 1972.

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



1258 effect and operation for the purpose of any refund claim,  
1259 assessment, appeal, suit, right or cause of action for taxes paid,  
1260 due or accrued under the laws of this state for any tax period  
1261 beginning before the date on which this act becomes effective, for  
1262 the collection and enrollment of liens for any taxes due or  
1263 accrued for any tax period beginning before the date on which this  
1264 act becomes effective and for the execution of any warrant under  
1265 such laws for a tax period beginning before the date on which this  
1266 act becomes effective, and for the imposition of any penalties,  
1267 forfeitures or claims for failure to comply with such laws in  
1268 regard to any tax period beginning prior to the date on which this  
1269 act becomes effective.

1270           **SECTION 11.** This act shall take effect and be in force from  
1271 and after July 1, 2023.

