

**Mississippi Secretary of State**  
700 North Street P. O. Box 136, Jackson, MS 39205-0136

**ADMINISTRATIVE PROCEDURES NOTICE FILING**

AGENCY NAME Mississippi Department of Revenue		CONTACT PERSON Sam Portera	TELEPHONE NUMBER 601-923-7317	
ADDRESS PO Box 1033		CITY Jackson	STATE MS	ZIP 39215
EMAIL <a href="mailto:sam.portera@dor.ms.gov">sam.portera@dor.ms.gov</a>	SUBMIT DATE 10/10/17	Name or number of rule(s): Title 35, Part IV, Subpart 3, Chapter 09 Out of State Sales into the State. Concise Summary of Economic Impact Statement regarding system number 22459 proposed on 1/12/17.		

Short explanation of rule/amendment/repeal and reason(s) for proposing rule/amendment/repeal: This new rule is intended to provide guidance to out of state sellers who have a substantial economic presence in the state and provides a list of activities considered to purposefully and systematically exploit the market. **The rule was filed on January 12, 2017. Accompanying this notice is the Concise Summary of Economic Impact Statement for said rule.**

Specific legal authority authorizing the promulgation of rule: Miss. Code Ann. Section 27-65-93, "(1) The commissioner shall, from time to time, promulgate rules and regulations, not inconsistent with the provisions of the sales tax law, for making returns and for the ascertainment, assessment and collection of the tax imposed by the sales tax law as he may deem necessary to enforce its provisions."

List all rules repealed, amended, or suspended by the proposed rule: Miss. Admin Rule 35.IV.03.09 Out of State Sales into the State

**ORAL PROCEEDING:**

- An oral proceeding is scheduled for this rule on Date: \_\_\_\_\_ Time: \_\_\_\_\_ Place: \_\_\_\_\_
- Presently, an oral proceeding is not scheduled on this rule.

If an oral proceeding is not scheduled, an oral proceeding must be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) or more persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address, email address, and telephone number of the person(s) making the request; and, if you are an agent or attorney, the name, address, email address, and telephone number of the party or parties you represent. At any time within the twenty-five (25) day public comment period, written submissions including arguments, data, and views on the proposed rule/amendment/repeal may be submitted to the filing agency.

**ECONOMIC IMPACT STATEMENT:**

- Economic impact statement not required for this rule.  Concise summary of economic impact statement attached.

TEMPORARY RULES	PROPOSED ACTION ON RULES	FINAL ACTION ON RULES
_____ Original filing _____ Renewal of effectiveness To be in effect in _____ days Effective date: _____ Immediately upon filing _____ Other (specify): _____	<b>Action proposed:</b> _____ New rule(s) _____ Amendment to existing rule(s) _____ Repeal of existing rule(s) _____ Adoption by reference <b>Proposed final effective date:</b> _____ 30 days after filing _____ Other (specify): _____	<b>Date Proposed Rule Filed: 1/12/17</b> <b>Action taken:</b> _____ Adopted with no changes in text _____ Adopted with changes _____ Adopted by reference _____ Withdrawn _____ Repeal adopted as proposed <b>Effective date:</b> _____ 30 days after filing _____ Other (specify): _____

Printed name and Title of person authorized to file rules: Sam Portera, Deputy Office Director, Tax Policy

Signature of person authorized to file rules:  Sam Portera

<b>OFFICIAL FILING STAMP</b>  <div style="border: 1px solid black; height: 100px; width: 100%;"></div> Accepted for filing by	<b>DO NOT WRITE BELOW THIS LINE</b> <b>OFFICIAL FILING STAMP</b> <div style="border: 1px solid black; padding: 10px; text-align: center;">  </div> Accepted for filing by  #22977	<b>OFFICIAL FILING STAMP</b>  <div style="border: 1px solid black; height: 100px; width: 100%;"></div> Accepted for filing by
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The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.



DELBERT HOSEMANN  
Secretary of State

### CONCISE SUMMARY OF ECONOMIC IMPACT STATEMENT

An Economic Impact Statement is required for this proposed rule by Section 25-43-3.105 of the Administrative Procedures Act. This is a Concise Summary of the Economic Impact Statement which must be filed with the Secretary of State's Office.

AGENCY NAME Mississippi Department of Revenue	CONTACT PERSON Sam Portera	TELEPHONE NUMBER 601-923-7317
ADDRESS 500 Clinton Center Drive	CITY Clinton	STATE MS
EMAIL sam.portera@dor.ms.gov	DESCRIPTIVE TITLE OF PROPOSED RULE Title 35, Part IV, Subpart 3 Chapter 09 Out of State Sales into the State	
Specific Legal Authority Authorizing the promulgation of Rule: Miss. Code Ann. Section 27-65-93	Reference to Rules repealed, amended or suspended by the Proposed Rule: Miss. Admin. Code Title 35.IV.3.09 Out of State Sales into the State	

#### A. Estimated Costs and Benefits

1. Briefly summarize the benefits that may result from this regulation and who will benefit: The benefits that may result from the proposed regulation include providing greater clarity and guidance concerning the taxability of out of state sales and an increase in tax revenue and uniformly applied laws.
2. Briefly describe the need for the proposed rule: Per Miss. Code Ann. Section 27-67-4(2)(e), anyone who purposefully or systematically exploits the consumer market provided by this state by any media-assisted, media-facilitated or media-solicited means, including, but not limited to, direct mail advertising, unsolicited distribution of catalogues, computer-assisted shopping, television, radio or other electronic media, or magazine or newspaper advertisements or other media, creates nexus with this state. The DOR sees a need to properly define "purposefully and systematically exploiting the consumer market" in order to have a clear meaning. Sales originating from out of state have steadily increased over the years attributing to the erosion of the tax base for sales and use taxes for the State of Mississippi resulting in lower sales and use tax collections. This provides an unfair advantage to out of state businesses selling from outside Mississippi. The DOR is attempting to ensure that the laws of this state are uniformly applied to persons doing business in this state.
3. Briefly describe the effect the proposed action will have on the public health, safety, and welfare:  
None
4. Estimated Cost of implementing proposed action:
  - a. To the agency  
 Nothing    Minimal    Moderate    Substantial    Excessive
  - b. To other state or local government entities  
 Nothing    Minimal    Moderate    Substantial    Excessive
5. Estimated Cost and/or economic benefit to all persons directly affected by the proposed rule:
  - c. Cost:  
 Nothing    Minimal    Moderate    Substantial    Excessive
  - d. Economic Benefit:  
 Nothing    Minimal    Moderate    Substantial    Excessive

6. Estimated impact on small businesses:

Nothing  Minimal  Moderate  Substantial  Excessive

- a. Estimate of the number of small businesses subject to the proposed regulation: A small business is defined in Miss. Code Ann. Section 25-43-4.102 as a for-profit business employing fewer than one hundred full-time employees or having gross annual sales or revenue of less than \$10,000,000. The regulation includes any businesses with sales into Mississippi over \$250,000. The DOR could not determine with any accuracy or reliability the total number of businesses in the U.S. that have gross sales or revenues less than \$10,000,000 or how many of those businesses are making sales of \$250,000 or more in this state. The regulation could potentially affect any business having sales or revenue of less than \$10,000,000 and sales into Mississippi over \$250,000.
- b. Projected costs for small businesses to comply: Minimal impact for out of state small businesses. Many companies already have filing requirements in other states and already have the necessary recordkeeping and reporting mechanisms in place. There is a \$600 discount available per year as a cost of collection reimbursement.
- c. Statement of probable effect on impacted small businesses: Minimal impact for out of state small businesses. Many companies already have filing requirements in other states. Many companies already have filing requirements in other states and already have the necessary recordkeeping and reporting mechanisms in place. There is a \$600 discount available per year as a cost of collection reimbursement.

7. The cost of adopting the rule compared to not adopting the rule or significantly amending the existing rule (check option):

substantially less than  moderately less than  minimally less than  
 the same as  minimally more than  moderately more than  
 substantially more than  excessively more than

8. The benefit of adopting the rule compared to not adopting the rule or significantly amending the existing rule (check option):

substantially less than  moderately less than  minimally less than  
 the same as  minimally more than  moderately more than  
 substantially more than  excessively more than

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B. Reasonable Alternative Methods

1. Other than adopting this rule, are there less costly or less intrusive methods for achieving the purpose of the proposed rule?  
 yes  no
2. If yes, please briefly describe available, reasonable alternative(s) and the reasons for rejecting those alternatives in favor of the proposed rule. (Please see §25-43-4.104 for factors you must consider.)  
The law does not provide any other methods to collect and remit tax.

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C. Data and Methodology

1. Please briefly describe the data and methodology you used in making the estimates required by this form.

The DOR used an estimate of lost sales tax revenue provided by 21st Century Retail on the efairness.org website which was created from data using the National Conference of State Legislators 2015 data. This estimate was adjusted for sales tax voluntarily collected from out of state vendors to arrive at \$150,000,000.

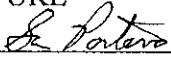
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D. Public Notice

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1. Where, when, and how may someone present their views on the proposed rule and request an oral proceeding on the proposed rule if one is not already scheduled?

The proposed rule was filed on January 12, 2017 and a public hearing on the proposed rule was held on February 15, 2017, at 3:30 p.m. at the Department of Revenue, 500 Clinton Center Dr., Clinton, MS 39056. Anyone wishing to do so may present their views on the proposed rule in writing by emailing their views to [sam.portera@dor.ms.gov](mailto:sam.portera@dor.ms.gov), or by mail to P.O. Box 22828, Jackson, MS 39056, ATTN: Sam Portera. Said written presentations must be submitted no later than 5:00 p.m. on October 30, 2017.

SIGNATURE 	TITLE Deputy Office Director – Tax Policy
DATE 10/10/17	PROPOSED EFFECTIVE DATE OF RULE 11/30/17