

By: Representative Smith (39th)

To: Ways and Means

HOUSE BILL NO. 933

1 AN ACT TO AMEND SECTION 27-65-9, MISSISSIPPI CODE OF 1972, TO
 2 REVISE THE DEFINITION OF THE TERM "DOING BUSINESS" FOR PURPOSES OF
 3 THE STATE SALES TAX LAW; TO AMEND SECTION 27-67-3, MISSISSIPPI
 4 CODE OF 1972, TO REVISE THE DEFINITION OF THE TERMS "PERSONS DOING
 5 BUSINESS IN THIS STATE" AND "PERSONS MAINTAINING A PLACE OF
 6 BUSINESS WITHIN THIS STATE" FOR PURPOSES OF THE STATE USE TAX LAW;
 7 TO AMEND SECTION 27-67-4, MISSISSIPPI CODE OF 1972, IN CONFORMITY
 8 THERETO; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 27-65-9, Mississippi Code of 1972, is
 11 amended as follows:

12 27-65-9. (1) "Business" shall mean and include all
 13 activities or acts engaged in (personal or corporate), for benefit
 14 or advantage, either direct or indirect, and not exempting
 15 subactivities in connection therewith. Each of such subactivities
 16 shall be considered business engaged in, taxable in the class in
 17 which it falls.

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



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

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

26 (c) Retail sales of prepared meals when:

27 (i) Sold on the campus of a public or private
28 university, college or community or junior college in this state
29 to a student enrolled at such university, college or community or
30 junior college; and

31 (ii) Payment for the sale is made through the use
32 of a prepaid declining balance account or similar instrument or
33 account issued to such student by the university, college or
34 community or junior college that may be used only to purchase
35 prepared meals.

36 (3) "Business" shall include the activity or activities of a
37 person in this state performing a service under contract or
38 agreement with another person when the service performed is
39 taxable under the provisions of this chapter.

40 (4) "Doing business" shall include any person owning
41 personal property located in this state under lease or rental
42 agreement or any person installing personal property within this
43 state.

44 (5) "Doing business" shall include any person represented in
45 this state by salesmen taking or soliciting orders * * *.

46 (6) "Doing business" shall include:



47 (a) A person shall be presumed to be doing business in
48 this state if:

49 (i) An affiliated person has substantial nexus
50 with this state; or

51 (ii) Any person, other than a person acting in its
52 capacity as a common carrier, that has substantial nexus with this
53 state:

54 1. Sells a similar line of products as the
55 person and does so under the same or a similar business name;

56 2. Maintains an office, distribution
57 facility, warehouse or storage place, or similar place of business
58 in the state to facilitate the delivery of property or services
59 sold by the person to the person's customers;

60 3. Uses trademarks, service marks, or trade
61 names in the state that are the same or substantially similar to
62 those used by the person;

63 4. Delivers, installs, assembles, or performs
64 maintenance services for the person's customers within the state;

65 5. Facilitates the person's delivery of
66 property to customers in the state by allowing the person's
67 customers to pick up property sold by the person at an office,
68 distribution facility, warehouse, storage place, or similar place
69 of business maintained by the entity in the state; or

70 6. Conducts any other activities in the state
71 that are significantly associated with the person's ability to



72 establish and maintain a market in the state for the person's
73 sales.

74 (iii) The presumptions in this paragraph (a) may
75 be rebutted by demonstrating that the activities of the other
76 person or affiliated person in the state are not significantly
77 associated with the person's ability to establish or maintain a
78 market in this state for the person's sales.

79 (b) (i) A person shall also be presumed to be doing
80 business in this state if the person enters into an agreement with
81 one or more residents of this state under which the resident, for
82 a commission or other consideration, directly or indirectly refers
83 potential customers, whether by a link on an Internet website, by
84 telemarketing, by an in-person oral presentation, or otherwise, to
85 the person, if the cumulative gross receipts from sales by the
86 person to customers in the state who are referred to the person
87 by all residents with this type of an agreement with the person
88 is in excess of Ten Thousand Dollars (\$10,000.00) during the
89 preceding twelve (12) months.

90 (ii) The presumption in this paragraph (b) may be
91 rebutted by submitting proof that the residents with whom the
92 person has an agreement did not engage in any activity within the
93 state that was significantly associated with the person's ability
94 to establish or maintain the person's market in the state during
95 the preceding twelve (12) months. Such proof may consist of sworn
96 written statements from all of the residents with whom the person



97 has an agreement stating that they did not engage in any
98 solicitation in the state on behalf of the person during the
99 preceding year provided that such statements were provided and
100 obtained in good faith.

101 (iii) The presumption in this paragraph (b) shall
102 take effect ninety (90) days after the effective date of this act
103 and shall apply to sales made, uses occurring, and services
104 rendered on or after the date this section shall have become a law
105 in accordance with the applicable transition provisions and
106 without regard as to the date the person and the resident entered
107 into the agreement described in this paragraph (b). However, the
108 term "the preceding twelve (12) months" as used in this paragraph
109 (b) may include the twelve (12) months commencing before the
110 effective date of this section.

111 (c) Any ruling, agreement or contract, whether written
112 or oral, express or implied, between a person doing business in
113 this state and this state's executive branch, or any other state
114 agency or department, stating, agreeing, or ruling that the person
115 is not required to collect sales tax in this state despite the
116 presence of a warehouse, distribution center, or fulfillment
117 center in the state that is owned or operated by the person or an
118 affiliated person of the person shall be null and void unless it
119 is specifically approved by a majority vote of each of the houses
120 of this Legislature.



121 (d) If any person sells or leases tangible personal
122 property or services to the state, a state department, a state
123 agency, or an agent thereof, that person and any affiliated person
124 shall, as a prerequisite for any such sale or lease, register with
125 the Department of Revenue as a person engaging in business in this
126 state as provided in Section 27-65-27 and comply with all legal
127 requirements imposed on a person engaging in business in this
128 state, including the requirement to collect and remit sales tax on
129 all taxable sales of tangible personal property and services to
130 customers in the state.

131 (e) For the purposes of this subsection (6), the term
132 "affiliated person" means any person that is a member of the same
133 "controlled group of corporations" as defined in Section 1563(a)
134 of the Internal Revenue Code as the person or any other entity
135 that, notwithstanding its form of organization, bears the same
136 ownership relationship to the person as a corporation that is a
137 member of the same "controlled group of corporations" as defined
138 in Section 1563(a) of the Internal Revenue Code.

139 **SECTION 2.** Section 27-67-3, Mississippi Code of 1972, is
140 amended as follows:

141 27-67-3. Whenever used in this article, the words, phrases
142 and terms shall have the meaning ascribed to them as follows:

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



145 (b) "Commissioner" means the Commissioner of Revenue of
146 the Department of Revenue.

147 (c) "Person" means any individual, firm, partnership,
148 joint venture, association, corporation, estate, trust, receiver,
149 syndicate or any other group or combination acting as a unit and
150 includes the plural as well as the singular in number. "Person"
151 shall also include husband or wife, or both, where joint benefits
152 are derived from the operation of a business taxed hereunder or
153 where joint benefits are derived from the use of property taxed
154 hereunder.

155 (d) "Taxpayer" means any person liable for the payment
156 of any tax hereunder, or liable for the collection and payment of
157 the tax.

158 (e) "Sale" or "purchase" means the exchange of
159 properties for money or other consideration, and the barter of
160 properties or products. Every closed transaction by which title
161 to, or possession of, tangible personal property or specified
162 digital products passes shall constitute a taxable event. A
163 transaction whereby the possession of property or products is
164 transferred but the seller retains title as security for payment
165 of the selling price shall be deemed a sale.

166 (f) "Purchase price" or "sales price" means the total
167 amount for which tangible personal property or specified digital
168 product is purchased or sold, valued in money, including any
169 additional charges for deferred payment, installation and service



170 charges, and freight charges to the point of use within this
171 state, without any deduction for cost of property or products
172 sold, expenses or losses, or taxes of any kind except those exempt
173 by the sales tax law. "Purchase price" or "sales price" shall not
174 include cash discounts allowed and taken or merchandise returned
175 by customers when the total sales price is refunded either in cash
176 or by credit, and shall not include amounts allowed for a trade-in
177 of similar property or products.

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

182 (h) "Value" means the estimated or assessed monetary
183 worth of a thing or property. The value of property or products
184 transferred into this state for sales promotion or advertising
185 shall be an amount not less than the cost paid by the transferor
186 or donor. The value of property or products which have been used
187 in another state shall be determined by its cost less straight
188 line depreciation provided that value shall never be less than
189 twenty percent (20%) of the cost or other method acceptable to the
190 commissioner. On property or products imported by the
191 manufacturer thereof for rental or lease within this state, value
192 shall be the manufactured cost of the property and freight to the
193 place of use in Mississippi.



194 (i) "Tangible personal property" means personal
195 property perceptible to the human senses or by chemical analysis,
196 as opposed to real property or intangibles. "Tangible personal
197 property" shall include printed, mimeographed, multigraphed
198 matter, or material reproduced in any other manner, and books,
199 catalogs, manuals, publications or similar documents covering the
200 services of collecting, compiling or analyzing information of any
201 kind or nature. However, reports representing the work of persons
202 such as lawyers, accountants, engineers and similar professionals
203 shall not be included. "Tangible personal property" shall also
204 include tangible advertising or sales promotion materials such as,
205 but not limited to, displays, brochures, signs, catalogs, price
206 lists, point of sale advertising materials and technical manuals.
207 Tangible personal property shall also include computer software
208 programs.

209 (j) (i) "Person doing business in this state," "person
210 maintaining a place of business within this state," or any similar
211 term means any person having within this state an office, a
212 distribution house, a salesroom or house, a warehouse, or any
213 other place of business, or owning personal property located in
214 this state used by another person, or installing personal property
215 in this state. This definition also includes any person selling
216 or taking orders for any tangible personal property, either
217 personally, by mail or through an employee representative,



218 salesman, commission agent, canvasser, solicitor or independent
219 contractor or by any other means from within the state.

220 (ii) A person shall be presumed to be doing
221 business in this state if:

222 1. An affiliated person has substantial nexus
223 with this state; or

224 2. Any person, other than a person acting in
225 its capacity as a common carrier, that has substantial nexus with
226 this state:

227 a. Sells a similar line of products as
228 the person and does so under the same or a similar business name;

229 b. Maintains an office, distribution
230 facility, warehouse or storage place, or similar place of business
231 in the state to facilitate the delivery of property or services
232 sold by the person to the person's customers;

233 c. Uses trademarks, service marks, or
234 trade names in the state that are the same or substantially
235 similar to those used by the person;

236 d. Delivers, installs, assembles, or
237 performs maintenance services for the person's customers within
238 the state;

239 e. Facilitates the person's delivery of
240 property to customers in the state by allowing the person's
241 customers to pick up property sold by the person at an office,



242 distribution facility, warehouse, storage place, or similar place
243 of business maintained by the entity in the state; or

244 f. Conducts any other activities in the
245 state that are significantly associated with the person's ability
246 to establish and maintain a market in the state for the person's
247 sales.

248 3. The presumptions in this subparagraph (ii)
249 may be rebutted by demonstrating that the activities conducted by
250 the other person or affiliated person in the state are not
251 significantly associated with the person's ability to establish or
252 maintain a market in this state for the person's sales.

253 (iii) 1. A person shall also be presumed to be
254 doing business in this state if the person enters into an
255 agreement with one or more residents of this state under which the
256 resident, for a commission or other consideration, directly or
257 indirectly refers potential customers, whether by a link on an
258 Internet website, by telemarketing, by an in-person oral
259 presentation, or otherwise, to the person, if the cumulative gross
260 receipts from sales by the person to customers in the state who
261 are referred to the person by all residents with this type of an
262 agreement with the person is in excess of Ten Thousand Dollars
263 (\$10,000.00) during the preceding twelve (12) months.

264 2. The presumption in this subparagraph (iii)
265 may be rebutted by submitting proof that the residents with whom
266 the person has an agreement did not engage in any activity within



267 the state that was significantly associated with the person's
268 ability to establish or maintain the person's market in the state
269 during the preceding twelve (12) months. Such proof may consist
270 of sworn written statements from all of the residents with whom
271 the person has an agreement stating that they did not engage in
272 any solicitation in the state on behalf of the person during the
273 preceding year provided that such statements were provided and
274 obtained in good faith.

275 3. The presumption in this subparagraph (iii)
276 shall take effect ninety (90) days after the effective date of
277 this act and shall apply to sales made, uses occurring, and
278 services rendered on or after the date this section shall have
279 become a law in accordance with the applicable transition
280 provisions and without regard as to the date the person and the
281 resident entered into the agreement described in this subparagraph
282 (iii). However, the term "the preceding twelve (12) months" as
283 used in this subparagraph (iii) may include the twelve (12) months
284 commencing before the effective date of this section.

285 4. Any ruling, agreement or contract, whether
286 written or oral, express or implied, between a person and this
287 state's executive branch, or any other state agency or department,
288 stating, agreeing, or ruling that the person is not required to
289 collect use tax in this state despite the presence of a warehouse,
290 distribution center, or fulfillment center in the state that is
291 owned or operated by the person or an affiliated person shall be



292 null and void unless it is specifically approved by a majority
293 vote of each of the houses of this Legislature.

294 5. If any person sells or leases tangible
295 personal property or services to the state, a state department, a
296 state agency, or an agent thereof, that person and any affiliated
297 person shall, as a prerequisite for any such sale or lease,
298 register with the Department of Revenue as provided in Section
299 27-67-9 and comply with all legal requirements imposed on a person
300 maintaining a place of business or doing business in this state,
301 including the requirement to collect and remit use tax on all
302 taxable sales of tangible personal property and services to
303 customers in the state.

304 (h) For the purposes of this subparagraph (iii), the
305 term "affiliated person" means any person that is a member of the
306 same "controlled group of corporations" as defined in Section
307 1563(a) of the Internal Revenue Code as the person or any other
308 entity that, notwithstanding its form of organization, bears the
309 same ownership relationship to the person as a corporation that is
310 a member of the same "controlled group of corporations" as defined
311 in Section 1563(a) of the Internal Revenue Code.

312 Any person doing business under the terms of * * * this
313 article by reason of coming under any one or more of the
314 qualifying provisions listed above shall be considered as doing
315 business on all transactions involving sales to persons within
316 this state.



317 (k) "Use" or "consumption" means the first use or
318 intended use within this state of tangible personal property or
319 specified digital product and shall include rental or loan by
320 owners or use by lessees or other persons receiving benefits from
321 use of the property or product. "Use" or "consumption" shall
322 include the benefit realized or to be realized by persons
323 importing or causing to be imported into this state tangible
324 advertising or sales promotion materials.

325 (l) "Storage" means keeping tangible personal property
326 or specified digital product in this state for subsequent use or
327 consumption in this state.

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

330 **SECTION 3.** Section 27-67-4, Mississippi Code of 1972, is
331 amended as follows:

332 27-67-4. * * *

333 The tax required under this * * * chapter to be collected,
334 and any amount unreturned to a purchaser that is not tax but was
335 collected from the purchaser under the representation that it was
336 tax, constitute funds of the State of Mississippi from the moment
337 of collection.

338 **SECTION 4.** This act shall take effect and be in force from
339 and after July 1, 2013.

