

By: Representative Fleming

To: Ways and Means

HOUSE BILL NO. 173

1 AN ACT TO AMEND SECTION 27-65-17, MISSISSIPPI CODE OF 1972,
 2 TO REDUCE THE SALES TAX RATE ON RETAIL SALES OF FOOD FOR HUMAN
 3 CONSUMPTION NOT PURCHASED WITH FOOD STAMPS, BUT WHICH WOULD BE
 4 EXEMPT FROM SALES TAX IF SUCH FOOD WAS PURCHASED WITH FOOD STAMPS,
 5 TO 2%; TO AMEND SECTION 27-65-75, MISSISSIPPI CODE OF 1972, TO
 6 PROVIDE THAT ALL OF THE SALES TAX REVENUE COLLECTED ON SUCH RETAIL
 7 SALES OF FOOD WITHIN A MUNICIPALITY SHALL BE ALLOCATED FOR
 8 DISTRIBUTION AND PAID TO SUCH MUNICIPALITY; TO INCREASE THE AMOUNT
 9 OF THE SALES TAX DIVERSION TO THE SCHOOL AD VALOREM TAX REDUCTION
 10 FUND AND THE EDUCATION ENHANCEMENT FUND; TO PROVIDE FOR THE
 11 PAYMENT OF A PERCENTAGE OF SALES TAX REVENUES GENERATED FROM
 12 BUSINESS ACTIVITIES OUTSIDE MUNICIPALITIES TO THE COUNTIES IN
 13 WHICH SUCH BUSINESS ACTIVITIES OCCURRED; TO AMEND SECTION
 14 27-65-53, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR
 15 RELATED PURPOSES.

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

17 **SECTION 1.** Section 27-65-17, Mississippi Code of 1972, is
 18 amended as follows:

19 27-65-17. (1) Upon every person engaging or continuing
 20 within this state in the business of selling any tangible personal
 21 property whatsoever there is hereby levied, assessed and shall be
 22 collected a tax equal to seven percent (7%) of the gross proceeds
 23 of the retail sales of the business, except as otherwise provided
 24 herein.

25 Retail sales of farm tractors shall be taxed at the rate of
 26 one percent (1%) when made to farmers for agricultural purposes.

27 Retail sales of farm implements sold to farmers and used
 28 directly in the production of poultry, ratite, domesticated fish
 29 as defined in Section 69-7-501, livestock, livestock products,
 30 agricultural crops or ornamental plant crops or used for other
 31 agricultural purposes shall be taxed at the rate of three percent
 32 (3%) when used on the farm. The three percent (3%) rate shall
 33 also apply to all equipment used in logging, pulpwood operations



34 or tree farming which is either (a) self-propelled or which is (b)
35 mounted so that it is (i) permanently attached to other equipment
36 which is self-propelled or (ii) permanently attached to other
37 equipment drawn by a vehicle which is self-propelled.

38 Except as otherwise provided in subsection (3) of this
39 section, retail sales of aircraft, automobiles, trucks,
40 truck-tractors, semitrailers and mobile homes shall be taxed at
41 the rate of three percent (3%).

42 Sales of manufacturing machinery or manufacturing machine
43 parts when made to a manufacturer or custom processor for plant
44 use only when said machinery and machine parts will be used
45 exclusively and directly within this state in manufacturing a
46 commodity for sale, rental or in processing for a fee shall be
47 taxed at the rate of one and one-half percent (1-1/2%).

48 Sales of materials for use in track and track structures to a
49 railroad whose rates are fixed by the Interstate Commerce
50 Commission or the Mississippi Public Service Commission shall be
51 taxed at the rate of three percent (3%).

52 Sales of tangible personal property to electric power
53 associations for use in the ordinary and necessary operation of
54 their generating or distribution systems shall be taxed at the
55 rate of one percent (1%).

56 Wholesale sales of beer shall be taxed at the rate of seven
57 percent (7%), and the retailer shall file a return and compute the
58 retail tax on retail sales but may take credit for the amount of
59 the tax paid to the wholesaler on said return covering the
60 subsequent sales of same property, provided adequate invoices and
61 records are maintained to substantiate the credit.

62 Wholesale sales of food and drink for human consumption to
63 full service vending machine operators to be sold through vending
64 machines located apart from and not connected with other taxable
65 businesses shall be taxed at the rate of eight percent (8%).



66 A manufacturer selling at retail in this state shall be
67 required to make returns of the gross proceeds of such sales and
68 pay the tax imposed in this section.

69 Any person exercising any privilege taxable under Section
70 27-65-15 and selling his natural resource products at wholesale or
71 to exempt persons shall pay the tax levied by said section in lieu
72 of the tax levied by this section.

73 (2) From and after January 1, 1995, retail sales of private
74 carriers of passengers and light carriers of property, as defined
75 in Section 27-51-101, shall be taxed an additional two percent
76 (2%).

77 (3) In lieu of the tax levied in subsection (1) of this
78 section, there is levied on retail sales of truck-tractors and
79 semitrailers used in interstate commerce and registered under the
80 International Registration Plan (IRP) or any similar reciprocity
81 agreement or compact relating to the proportional registration of
82 commercial vehicles entered into as provided for in Section
83 27-19-143, a tax at the rate of three percent (3%) of the portion
84 of the sale that is attributable to the usage of such
85 truck-tractor or semitrailer in Mississippi. The portion of the
86 retail sale that is attributable to the usage of such
87 truck-tractor or semitrailer in Mississippi is the retail sales
88 price of the truck-tractor or semitrailer multiplied by the
89 percentage of the total miles traveled by the vehicle that are
90 traveled in Mississippi. The tax levied pursuant to this
91 subsection (3) shall be collected by the State Tax Commission from
92 the purchaser of such truck-tractor or semitrailer at the time of
93 registration of such truck-tractor or semitrailer.

94 (4) From and after July 1, 2005, through June 30, 2016, in
95 lieu of the tax levied in subsection (1) of this section, retail
96 sales of food for human consumption not purchased with food stamps
97 issued by the United States Department of Agriculture, or other
98 federal agency, but which would be exempt from the taxes imposed



99 by this chapter under Section 27-65-111(o) if the food items were
100 purchased with food stamps, shall be taxed at the rate of two
101 percent (2%).

102 **SECTION 2.** Section 27-65-75, Mississippi Code of 1972, is
103 amended as follows:

104 27-65-75. On or before the fifteenth day of each month, the
105 revenue collected under the provisions of this chapter during the
106 preceding month shall be paid and distributed as follows:

107 (1) On or before August 15, 1992, and each succeeding month
108 thereafter through July 15, 1993, eighteen percent (18%) of the
109 total sales tax revenue collected during the preceding month under
110 the provisions of this chapter, except that collected under the
111 provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on
112 business activities within a municipal corporation shall be
113 allocated for distribution to such municipality and paid to such
114 municipal corporation. On or before August 15, 1993, and each
115 succeeding month thereafter through July 15, 2005, eighteen and
116 one-half percent (18-1/2%) of the total sales tax revenue
117 collected during the preceding month under the provisions of this
118 chapter, except that collected under the provisions of Sections
119 27-65-15, 27-65-19(3) and 27-65-21, on business activities within
120 a municipal corporation shall be allocated for distribution to
121 such municipality and paid to such municipal corporation. On or
122 before August 15, 2005, and each succeeding month thereafter
123 through July 15, 2016, eighteen and one-half percent (18-1/2%) of
124 the total sales tax revenue collected during the preceding month
125 under the provisions of this chapter, except that collected under
126 the provisions of Sections 27-65-15, 27-65-17(4), 27-65-19(3) and
127 27-65-21, on business activities within a municipal corporation
128 and all of the sales tax revenue collected during the preceding
129 month under the provisions of Section 27-65-17(4) on business
130 activities within a municipal corporation shall be allocated for
131 distribution to such municipality and paid to such municipal



132 corporation. On or before August 15, 2016, and each succeeding
133 month thereafter, eighteen and one-half percent (18-1/2%) of the
134 total sales tax revenue collected during the preceding month under
135 the provisions of this chapter, except that collected under the
136 provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on
137 business activities within a municipal corporation shall be
138 allocated for distribution to such municipality and paid to such
139 municipal corporation.

140 A municipal corporation, for the purpose of distributing the
141 tax under this subsection, shall mean and include all incorporated
142 cities, towns and villages.

143 Monies allocated for distribution and credited to a municipal
144 corporation under this subsection may be pledged as security for
145 any loan received by the municipal corporation for the purpose of
146 capital improvements as authorized under Section 57-1-303, or
147 loans as authorized under Section 57-44-7, or water systems
148 improvements as authorized under Section 41-3-16.

149 In any county having a county seat which is not an
150 incorporated municipality, the distribution provided hereunder
151 shall be made as though the county seat was an incorporated
152 municipality; however, the distribution to such municipality shall
153 be paid to the county treasury wherein the municipality is located
154 and such funds shall be used for road, bridge and street
155 construction or maintenance therein.

156 (2) On or before September 15, 1987, and each succeeding
157 month thereafter, from the revenue collected under this chapter
158 during the preceding month One Million One Hundred Twenty-five
159 Thousand Dollars (\$1,125,000.00) shall be allocated for
160 distribution to municipal corporations as defined under subsection
161 (1) of this section in the proportion that the number of gallons
162 of gasoline and diesel fuel sold by distributors to consumers and
163 retailers in each such municipality during the preceding fiscal
164 year bears to the total gallons of gasoline and diesel fuel sold



165 by distributors to consumers and retailers in municipalities
166 statewide during the preceding fiscal year. The State Tax
167 Commission shall require all distributors of gasoline and diesel
168 fuel to report to the commission monthly the total number of
169 gallons of gasoline and diesel fuel sold by them to consumers and
170 retailers in each municipality during the preceding month. The
171 State Tax Commission shall have the authority to promulgate such
172 rules and regulations as is necessary to determine the number of
173 gallons of gasoline and diesel fuel sold by distributors to
174 consumers and retailers in each municipality. In determining the
175 percentage allocation of funds under this subsection for the
176 fiscal year beginning July 1, 1987, and ending June 30, 1988, the
177 State Tax Commission may consider gallons of gasoline and diesel
178 fuel sold for a period of less than one (1) fiscal year. For the
179 purposes of this subsection, the term "fiscal year" means the
180 fiscal year beginning July 1 of a year.

181 (3) On or before September 15, 1987, and on or before the
182 fifteenth day of each succeeding month, until the date specified
183 in Section 65-39-35, the proceeds derived from contractors' taxes
184 levied under Section 27-65-21 on contracts for the construction or
185 reconstruction of highways designated under the highway program
186 created under Section 65-3-97 shall, except as otherwise provided
187 in Section 31-17-127, be deposited into the State Treasury to the
188 credit of the State Highway Fund to be used to fund such * * *
189 highway program. The Mississippi Department of Transportation
190 shall provide to the State Tax Commission such information as is
191 necessary to determine the amount of proceeds to be distributed
192 under this subsection.

193 (4) On or before August 15, 1994, and on or before the
194 fifteenth day of each succeeding month through July 15, 1999, from
195 the proceeds of gasoline, diesel fuel or kerosene taxes as
196 provided in Section 27-5-101(a)(ii)1, Four Million Dollars
197 (\$4,000,000.00) shall be deposited in the State Treasury to the



198 credit of a special fund designated as the "State Aid Road Fund,"
199 created by Section 65-9-17. On or before August 15, 1999, and on
200 or before the fifteenth day of each succeeding month, from the
201 total amount of the proceeds of gasoline, diesel fuel or kerosene
202 taxes apportioned by Section 27-5-101(a)(ii)1, Four Million
203 Dollars (\$4,000,000.00) or an amount equal to twenty-three and
204 one-fourth percent (23.25%) of such funds, whichever is the
205 greater amount, shall be deposited in the State Treasury to the
206 credit of the "State Aid Road Fund," created by Section 65-9-17.
207 Such funds shall be pledged to pay the principal of and interest
208 on state aid road bonds heretofore issued under Sections 19-9-51
209 through 19-9-77, in lieu of and in substitution for the funds
210 heretofore allocated to counties under this section. Such funds
211 may not be pledged for the payment of any state aid road bonds
212 issued after April 1, 1981; however, this prohibition against the
213 pledging of any such funds for the payment of bonds shall not
214 apply to any bonds for which intent to issue such bonds has been
215 published, for the first time, as provided by law prior to March
216 29, 1981. From the amount of taxes paid into the special fund
217 pursuant to this subsection and subsection (9) of this section,
218 there shall be first deducted and paid the amount necessary to pay
219 the expenses of the Office of State Aid Road Construction, as
220 authorized by the Legislature for all other general and special
221 fund agencies. The remainder of the fund shall be allocated
222 monthly to the several counties in accordance with the following
223 formula:

224 (a) One-third (1/3) shall be allocated to all counties
225 in equal shares;

226 (b) One-third (1/3) shall be allocated to counties
227 based on the proportion that the total number of rural road miles
228 in a county bears to the total number of rural road miles in all
229 counties of the state; and



230 (c) One-third (1/3) shall be allocated to counties
231 based on the proportion that the rural population of the county
232 bears to the total rural population in all counties of the state,
233 according to the latest federal decennial census.

234 For the purposes of this subsection, the term "gasoline,
235 diesel fuel or kerosene taxes" means such taxes as defined in
236 paragraph (f) of Section 27-5-101.

237 The amount of funds allocated to any county under this
238 subsection for any fiscal year after fiscal year 1994 shall not be
239 less than the amount allocated to such county for fiscal year
240 1994. Monies allocated to a county from the State Aid Road Fund
241 for fiscal year 1995 or any fiscal year thereafter that exceed the
242 amount of funds allocated to that county from the State Aid Road
243 Fund for fiscal year 1994, first must be expended by the county
244 for replacement or rehabilitation of bridges on the state aid road
245 system that have a sufficiency rating of less than twenty-five
246 (25), according to National Bridge Inspection standards before
247 such monies may be approved for expenditure by the State Aid Road
248 Engineer on other projects that qualify for the use of state aid
249 road funds.

250 Any reference in the general laws of this state or the
251 Mississippi Code of 1972 to Section 27-5-105 shall mean and be
252 construed to refer and apply to subsection (4) of Section
253 27-65-75.

254 (5) One Million Six Hundred Sixty-six Thousand Six Hundred
255 Sixty-six Dollars (\$1,666,666.00) each month shall be paid into
256 the special fund known as the "State Public School Building Fund"
257 created and existing under the provisions of Sections 37-47-1
258 through 37-47-67. Such payments into said fund are to be made on
259 the last day of each succeeding month hereafter.

260 (6) An amount each month beginning August 15, 1983, through
261 November 15, 1986, as specified in Section 6 of Chapter 542, Laws
262 of 1983, shall be paid into the special fund known as the



263 Correctional Facilities Construction Fund created in Section 6 of
264 Chapter 542, Laws of 1983.

265 (7) On or before August 15, 1992, and each succeeding month
266 thereafter through July 15, 2000, two and two hundred sixty-six
267 one-thousandths percent (2.266%) of the total sales tax revenue
268 collected during the preceding month under the provisions of this
269 chapter, except that collected under the provisions of Section
270 27-65-17(2) shall be deposited by the commission into the School
271 Ad Valorem Tax Reduction Fund created pursuant to Section
272 37-61-35. On or before August 15, 2000, and each succeeding month
273 thereafter through July 15, 2005, two and two hundred sixty-six
274 one-thousandths percent (2.266%) of the total sales tax revenue
275 collected during the preceding month under the provisions of this
276 chapter, except that collected under the provisions of Section
277 27-65-17(2), shall be deposited into the School Ad Valorem Tax
278 Reduction Fund created under Section 37-61-35 until such time that
279 the total amount deposited into the fund during a fiscal year
280 equals Forty-two Million Dollars (\$42,000,000.00). Thereafter,
281 the amounts diverted under this subsection (7) during the fiscal
282 year in excess of Forty-two Million Dollars (\$42,000,000.00) shall
283 be deposited into the Education Enhancement Fund created under
284 Section 37-61-33 for appropriation by the Legislature as other
285 education needs and shall not be subject to the percentage
286 appropriation requirements set forth in Section 37-61-33. On or
287 before August 15, 2005, and each succeeding month thereafter
288 through July 15, 2016, two and six-tenths percent (2.6%) of the
289 total sales tax revenue collected during the preceding month under
290 the provisions of this chapter, except that collected under the
291 provisions of Section 27-65-17(2) and 27-65-17(4), shall be
292 deposited into the School Ad Valorem Tax Reduction Fund created
293 under Section 37-61-35 until such time that the total amount
294 deposited into the fund during a fiscal year equals Forty-two
295 Million Dollars (\$42,000,000.00). Thereafter, the amounts



296 diverted under this subsection (7) during the fiscal year in
297 excess of Forty-two Million Dollars (\$42,000,000.00) shall be
298 deposited into the Education Enhancement Fund created under
299 Section 37-61-33 for appropriation by the Legislature as other
300 education needs and shall not be subject to the percentage
301 appropriation requirements set forth in Section 37-61-33. On or
302 before August 15, 2016, and each succeeding month thereafter, two
303 and two hundred sixty-six one-thousandths percent (2.266%) of the
304 total sales tax revenue collected during the preceding month under
305 the provisions of this chapter, except that collected under the
306 provisions of Section 27-65-17(2), shall be deposited into the
307 School Ad Valorem Tax Reduction Fund created under Section
308 37-61-35 until such time that the total amount deposited into the
309 fund during a fiscal year equals Forty-two Million Dollars
310 (\$42,000,000.00). Thereafter, the amounts diverted under this
311 subsection (7) during the fiscal year in excess of Forty-two
312 Million Dollars (\$42,000,000.00) shall be deposited into the
313 Education Enhancement Fund created under Section 37-61-33 for
314 appropriation by the Legislature as other education needs and
315 shall not be subject to the percentage appropriation requirements
316 set forth in Section 37-61-33.

317 (8) On or before August 15, 1992, and each succeeding month
318 thereafter through July 15, 2005, nine and seventy-three
319 one-thousandths percent (9.073%) of the total sales tax revenue
320 collected during the preceding month under the provisions of this
321 chapter, except that collected under the provisions of Section
322 27-65-17(2) shall be deposited into the Education Enhancement Fund
323 created pursuant to Section 37-61-33. On or before August 15,
324 2005, and each succeeding month thereafter through July 15, 2016,
325 ten and one-half percent (10.5%) of the total sales tax revenue
326 collected during the preceding month under the provisions of this
327 chapter, except that collected under the provisions of Sections
328 27-65-17(2) and 27-65-17(4), shall be deposited into the Education



329 Enhancement Fund created pursuant to Section 37-61-33. On or
330 before August 15, 2016, and each succeeding month thereafter, nine
331 and seventy-three one-thousandths percent (9.073%) of the total
332 sales tax revenue collected during the preceding month under the
333 provisions of this chapter, except that collected under the
334 provisions of Section 27-65-17(2) shall be deposited into the
335 Education Enhancement Fund created pursuant to Section 37-61-33.

336 (9) On or before August 15, 1994, and each succeeding month
337 thereafter, from the revenue collected under this chapter during
338 the preceding month, Two Hundred Fifty Thousand Dollars
339 (\$250,000.00) shall be paid into the State Aid Road Fund.

340 (10) On or before August 15, 1994, and each succeeding month
341 thereafter through August 15, 1995, from the revenue collected
342 under this chapter during the preceding month, Two Million Dollars
343 (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad
344 Valorem Tax Reduction Fund established in Section 27-51-105.

345 (11) Notwithstanding any other provision of this section to
346 the contrary, on or before February 15, 1995, and each succeeding
347 month thereafter, the sales tax revenue collected during the
348 preceding month under the provisions of Section 27-65-17(2) and
349 the corresponding levy in Section 27-65-23 on the rental or lease
350 of private carriers of passengers and light carriers of property
351 as defined in Section 27-51-101 shall be deposited, without
352 diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund
353 established in Section 27-51-105.

354 (12) Notwithstanding any other provision of this section to
355 the contrary, on or before August 15, 1995, and each succeeding
356 month thereafter, the sales tax revenue collected during the
357 preceding month under the provisions of Section 27-65-17(1) on
358 retail sales of private carriers of passengers and light carriers
359 of property, as defined in Section 27-51-101 and the corresponding
360 levy in Section 27-65-23 on the rental or lease of these vehicles,



361 shall be deposited, after diversion, into the Motor Vehicle Ad
362 Valorem Tax Reduction Fund established in Section 27-51-105.

363 (13) On or before July 15, 1994, and on or before the
364 fifteenth day of each succeeding month thereafter, that portion of
365 the avails of the tax imposed in Section 27-65-22, which is
366 derived from activities held on the Mississippi state fairgrounds
367 complex, shall be paid into a special fund hereby created in the
368 State Treasury and shall be expended pursuant to legislative
369 appropriations solely to defray the costs of repairs and
370 renovation at such Trade Mart and Coliseum.

371 (14) On or before August 15, 1998, and each succeeding month
372 thereafter through July 15, 2005, that portion of the avails of
373 the tax imposed in Section 27-65-23 which is derived from sales by
374 cotton compresses or cotton warehouses and which would otherwise
375 be paid into the General Fund, shall be deposited in an amount not
376 to exceed Two Million Dollars (\$2,000,000.00) into the special
377 fund created pursuant to Section 69-37-39.

378 (15) Notwithstanding any other provision of this section to
379 the contrary, on or before September 15, 2000, and each succeeding
380 month thereafter, the sales tax revenue collected during the
381 preceding month under the provisions of Section 27-65-19(1)(f) and
382 (g)(i)2, shall be deposited, without diversion, into the
383 Telecommunications Ad Valorem Tax Reduction Fund established in
384 Section 27-38-7.

385 (16) On or before August 15, 2000, and each succeeding month
386 thereafter, the sales tax revenue collected during the preceding
387 month under the provisions of this chapter on the gross proceeds
388 of sales of a project as defined in Section 57-30-1 shall be
389 deposited, after all diversions except the diversion provided for
390 in subsection (1) of this section, into the Sales Tax Incentive
391 Fund created in Section 57-30-3.

392 (17) Notwithstanding any other provision of this section to
393 the contrary, on or before April 15, 2002, and each succeeding



394 month thereafter, the sales tax revenue collected during the
395 preceding month under Section 27-65-23 on sales of parking
396 services of parking garages and lots at airports shall be
397 deposited, without diversion, into the special fund created
398 pursuant to Section 27-5-101(d).

399 (18) On or before August 15, 2005, and each succeeding month
400 thereafter through July 15, 2016, six and two-tenths percent
401 (6.2%) of the total sales tax revenue collected during the
402 preceding month under the provisions of this chapter, except that
403 collected under the provisions of Sections 27-65-15, 27-65-17(4),
404 27-65-19(3) and 27-65-21, on business activities within a county
405 but outside any municipal corporation, as defined in subsection
406 (1) of this section, shall be allocated for distribution and paid
407 to the county in which the business activity occurred. The amount
408 paid to each county under this subsection (18) shall be in
409 addition to any other funds allocated for distribution to the
410 various counties under this section.

411 (19) The remainder of the amounts collected under the
412 provisions of this chapter shall be paid into the State Treasury
413 to the credit of the General Fund.

414 (20) It shall be the duty of the municipal officials of any
415 municipality which expands its limits, or of any community which
416 incorporates as a municipality, to notify the commissioner of such
417 action thirty (30) days before the effective date. Failure to so
418 notify the commissioner shall cause such municipality to forfeit
419 the revenue which it would have been entitled to receive during
420 this period of time when the commissioner had no knowledge of the
421 action. If any funds have been erroneously disbursed to any
422 municipality or county or any overpayment of tax is recovered by
423 the taxpayer, the commissioner may make correction and adjust the
424 error or overpayment with such municipality or county by
425 withholding the necessary funds from any subsequent payment to be
426 made to the municipality or county.



427 **SECTION 3.** Section 27-65-53, Mississippi Code of 1972, is
428 amended as follows:

429 27-65-53. If the commissioner finds that the taxpayer has
430 overpaid his tax for any reason and the taxpayer has discontinued
431 business and there is no subsequent liability upon which the
432 excess may be credited, or if the amount of the excess so paid
433 shall exceed the estimated liability for the next twelve (12)
434 months, the excess shall be refunded to the taxpayer. Such amount
435 shall be certified to the State Auditor of Public Accounts by the
436 commission. The * * * auditor is hereby authorized to make such
437 investigation and audit of the claim as he finds necessary. If he
438 finds that the commissioner is correct in his determination, the
439 auditor may issue his warrant to the State Treasurer in favor of
440 the taxpayer for the amount of tax erroneously paid into the State
441 Treasury, such refunds to be made from current sales tax
442 collections. If part of the overpayment has been disbursed to any
443 municipality or county, under authority of Section 27-65-75, the
444 municipality or county, having erroneously received the money,
445 shall adjust the amount with the commissioner, or the overpayment
446 may be withheld by the state from any funds due by the state to
447 the municipality or county.

448 Provided, that where the taxpayer has overpaid his tax, the
449 commissioner may give credit for same and allow the taxpayer to
450 take credit on a subsequent return or, if necessary, in his
451 discretion, have the taxpayer file for a refund as provided
452 herein.

453 If any overpayment of tax as reflected in an application or
454 amended return, or both, filed by the taxpayer, and verified by
455 the commissioner or otherwise determined to be due by the
456 commissioner or commission, is not refunded or credited to a
457 taxpayer's account within ninety (90) days after the application
458 or amended return is filed or the date the commission or
459 commissioner determines a refund is due, whichever is later,



460 interest at the rate of one percent (1%) per month shall be
461 allowed on such overpayment computed for the period after
462 expiration of the ninety-day period provided herein to the date of
463 payment.

464 **SECTION 4.** Nothing in this act shall affect or defeat any
465 claim, assessment, appeal, suit, right or cause of action for
466 taxes due or accrued under the sales tax laws before the date on
467 which this act becomes effective, whether such claims,
468 assessments, appeals, suits or actions have been begun before the
469 date on which this act becomes effective or are begun thereafter;
470 and the provisions of the sales tax laws are expressly continued
471 in full force, effect and operation for the purpose of the
472 assessment, collection and enrollment of liens for any taxes due
473 or accrued and the execution of any warrant under such laws before
474 the date on which this act becomes effective, and for the
475 imposition of any penalties, forfeitures or claims for failure to
476 comply with such laws.

477 **SECTION 5.** This act shall take effect and be in force from
478 and after July 1, 2003.

