

By: Representative Fleming

To: Ways and Means

## HOUSE BILL NO. 202

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 WERE PURCHASED WITH FOOD  
5 STAMPS, TO 2%; TO AMEND SECTION 27-65-75, MISSISSIPPI CODE OF  
6 1972, TO PROVIDE THAT ALL OF THE SALES TAX REVENUE COLLECTED ON  
7 SUCH RETAIL SALES OF FOOD WITHIN A MUNICIPALITY SHALL BE ALLOCATED  
8 FOR DISTRIBUTION AND PAID TO SUCH MUNICIPALITY; TO INCREASE THE  
9 AMOUNT OF THE SALES TAX DIVERSIONS TO THE SCHOOL AD VALOREM TAX  
10 REDUCTION FUND AND THE EDUCATION ENHANCEMENT FUND; TO PROVIDE FOR  
11 THE 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, 2006, through June 30, 2017, 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 under Section

99 27-65-111(o) from the taxes imposed by this chapter if the food  
100 were 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, 2006, 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, 2006, and each succeeding month thereafter  
123 through July 15, 2017, 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, 2017, 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 highway  
189 program. The Mississippi Department of Transportation shall  
190 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, 2006, 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, 2006, and each succeeding month thereafter  
288 through July 15, 2017, 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, 2017, 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, 2006, 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  
323 Fund created pursuant to Section 37-61-33. On or before August  
324 15, 2006, and each succeeding month thereafter through July 15,  
325 2017, ten and one-half percent (10.5%) of the total sales tax  
326 revenue collected during the preceding month under the provisions  
327 of this chapter, except that collected under the provisions of  
328 Sections 27-65-17(2) and 27-65-17(4), shall be deposited into the

329 Education Enhancement Fund created pursuant to Section 37-61-33.  
330 On or before August 15, 2017, and each succeeding month  
331 thereafter, nine and seventy-three one-thousandths percent  
332 (9.073%) of the total sales tax revenue collected during the  
333 preceding month under the provisions of this chapter, except that  
334 collected under the provisions of Section 27-65-17(2), shall be  
335 deposited into the Education Enhancement Fund created pursuant to  
336 Section 37-61-33.

337 (9) On or before August 15, 1994, and each succeeding month  
338 thereafter, from the revenue collected under this chapter during  
339 the preceding month, Two Hundred Fifty Thousand Dollars  
340 (\$250,000.00) shall be paid into the State Aid Road Fund.

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

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

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

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

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

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

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

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

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

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

400 (18) On or before August 15, 2004, and each succeeding month  
401 thereafter through July 15, 2005, from the sales tax revenue  
402 collected during the preceding month under the provisions of this  
403 chapter, Two Million Five Hundred Thousand Dollars (\$2,500,000.00)  
404 shall be deposited into the Special Funds Transfer Fund created in  
405 Section 4 of Chapter 556, Laws of 2003.

406 (19) On or before August 15, 2006, and each succeeding month  
407 thereafter through July 15, 2017, six and two-tenths percent  
408 (6.2%) of the total sales tax revenue collected during the  
409 preceding month under the provisions of this chapter, except that  
410 collected under the provisions of Sections 27-65-15, 27-65-17(4),  
411 27-65-19(3) and 27-65-21, on business activities within a county  
412 but outside any municipal corporation, as defined in subsection  
413 (1) of this section, shall be allocated for distribution and paid  
414 to the county in which the business activity occurred. The amount  
415 paid to each county under this subsection (19) shall be in  
416 addition to any other funds allocated for distribution to the  
417 various counties under this section.

418 (20) The remainder of the amounts collected under the  
419 provisions of this chapter shall be paid into the State Treasury  
420 to the credit of the General Fund.

421 (21) It shall be the duty of the municipal officials of any  
422 municipality which expands its limits, or of any community which  
423 incorporates as a municipality, to notify the commissioner of such  
424 action thirty (30) days before the effective date. Failure to so  
425 notify the commissioner shall cause such municipality to forfeit  
426 the revenue which it would have been entitled to receive during  
427 this period of time when the commissioner had no knowledge of the

428 action. If any funds have been erroneously disbursed to any  
429 municipality or county or any overpayment of tax is recovered by  
430 the taxpayer, the commissioner may make correction and adjust the  
431 error or overpayment with such municipality or county by  
432 withholding the necessary funds from any subsequent payment to be  
433 made to the municipality or county.

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

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

455 Provided, that where the taxpayer has overpaid his tax, the  
456 commissioner may give credit for same and allow the taxpayer to  
457 take credit on a subsequent return or, if necessary, in his  
458 discretion, have the taxpayer file for a refund as provided  
459 herein.

460           If any overpayment of tax as reflected in an application or  
461 amended return, or both, filed by the taxpayer, and verified by  
462 the commissioner or otherwise determined to be due by the  
463 commissioner or commission, is not refunded or credited to a  
464 taxpayer's account within ninety (90) days after the application  
465 or amended return is filed or the date the commission or  
466 commissioner determines a refund is due, whichever is later,  
467 interest at the rate of one percent (1%) per month shall be  
468 allowed on such overpayment computed for the period after  
469 expiration of the ninety-day period provided herein to the date of  
470 payment.

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

484           **SECTION 5.** This act shall take effect and be in force from  
485 and after July 1, 2004.