

By: Senator(s) Robertson

To: Finance

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2742

1 AN ACT TO PROVIDE FOR THE HEARING OF APPEALS FROM ASSESSMENTS  
2 OF CERTAIN TAXES, DENIALS OF REFUND CLAIMS AND DENIALS OF WAIVERS  
3 OF TAG PENALTIES BY THE STATE TAX COMMISSION; TO PROVIDE FOR THE  
4 HEARING OF APPEALS FROM THE SUSPENSION, SURRENDER, SEIZURE OR  
5 REVOCATION OF CERTAIN PERMITS, TAGS OR TITLES ISSUED BY THE STATE  
6 TAX COMMISSION; TO PROVIDE FOR THE HEARING OF APPEALS FROM DENIALS  
7 OF REQUESTS FOR CERTAIN PERMITS, TAGS OR TITLES ISSUED OR APPROVED  
8 BY THE STATE TAX COMMISSION; TO PROVIDE FOR THE APPOINTMENT OF  
9 HEARING OFFICERS AND THE CREATION OF A BOARD OF REVIEW TO HEAR  
10 APPEALS; TO PROVIDE OPERATING PROCEDURES FOR HEARING OFFICER AND  
11 THE BOARD OF REVIEW; TO PROVIDE THE TIME WITHIN WHICH APPEALS MUST  
12 BE MADE; TO PROVIDE THE MANNER IN WHICH SUCH APPEALS MUST BE MADE;  
13 TO PROVIDE FOR APPEALS FROM DECISIONS OF HEARING OFFICERS AND THE  
14 BOARD OF REVIEW TO THE STATE TAX COMMISSION; TO PROVIDE FOR  
15 APPEALS FROM DECISIONS OF THE STATE TAX COMMISSION; TO PROVIDE THE  
16 STANDARDS OF REVIEW OF SUCH APPEALS; TO PROHIBIT THE DISCLOSURE OF  
17 INFORMATION IN THE POSSESSION OF THE COMMISSION AND TO PROVIDE  
18 EXCEPTIONS TO SUCH PROHIBITION; TO EXEMPT CERTAIN RECORDS IN THE  
19 FILES OF THE STATE TAX COMMISSION FROM THE MISSISSIPPI PUBLIC  
20 RECORDS ACT OF 1983; TO EXEMPT CERTAIN MEETINGS AND DELIBERATIONS  
21 OF THE STATE TAX COMMISSION AND HEARING OFFICERS AND THE BOARD OF  
22 REVIEW OF THE STATE TAX COMMISSION FROM THE OPEN MEETINGS LAW; TO  
23 EXCLUDE FROM THE PROVISIONS OF THIS ACT FUNCTIONS OF THE STATE TAX  
24 COMMISSION THAT RELATE TO AD VALOREM TAXATION, THE LOCAL OPTION  
25 ALCOHOLIC BEVERAGE LAW AND THE MISSISSIPPI NATIVE WINE LAW OF  
26 1976; TO AMEND SECTIONS 25-41-3, 27-7-51, 27-7-53, 27-7-55,  
27 27-7-79, 27-7-315, 27-7-317, 27-9-49, 27-13-23, 27-13-25,  
28 27-13-29, 27-13-65, 27-19-48, 27-19-73, 27-55-535, 27-57-19,  
29 27-65-27, 27-65-57, 27-69-9, 27-73-1, 27-73-5, 67-3-29, 67-3-59  
30 AND 75-23-25, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO  
31 BRING FORWARD SECTION 25-43-1.102, MISSISSIPPI CODE OF 1972, WHICH  
32 DEFINES CERTAIN TERMS UNDER THE ADMINISTRATIVE PROCEDURES LAW; TO  
33 REPEAL SECTIONS 27-3-29, 27-7-71, 27-7-73, 27-9-47, 27-13-43,  
34 27-13-45, 27-19-337, 27-55-41, 27-55-549, 27-57-29, 27-59-43,  
35 27-59-317, 27-61-35, 27-65-45, 27-65-47, 27-65-49, 27-67-23,  
36 27-67-25, 27-67-27, 27-69-43 AND 63-21-61, MISSISSIPPI CODE OF  
37 1972, WHICH PROVIDE FOR APPEALS FROM CERTAIN ACTIONS OF THE STATE  
38 TAX COMMISSION; AND FOR RELATED PURPOSES.

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

40 **SECTION 1.** As used in Sections 1 through 10 of this act:

41 (a) "Agency" means the commissioner acting directly or  
42 through his duly authorized officers, agents, representatives and  
43 employees, to perform duties and powers prescribed by the laws of  
44 this state to be performed by the Chairman of the State Tax  
45 Commission, the Commissioner of Revenue or the State Tax

46 Commission, except as provided in Section 27-3-31 for those  
47 matters with respect to which the chairman and associate  
48 commissioners of the State Tax Commission act collectively as a  
49 commission.

50 (b) "Board of review" means the board of review of the  
51 State Tax Commission as appointed by the commissioner under  
52 Section 2 of this act, and also means a panel of the board of  
53 review when an appeal is considered by a panel of the board of  
54 review instead of the board of review en banc.

55 (c) "Commissioner" means the Chairman of the State Tax  
56 Commission.

57 (d) "Commission" means the State Tax Commission as  
58 created under Section 27-3-1 when the members thereof sit  
59 collectively to hear appeals from a hearing officer or from the  
60 board of review as provided in this Sections 1 through 10 of this  
61 act.

62 (e) "Denial" means the final decision of the staff of  
63 the agency to deny the claim, request for waiver or application  
64 being considered. In this context, staff of the agency does not  
65 include the board of review or the commission. "Denial" does not  
66 mean the act of returning or refusing to consider a claim, request  
67 for waiver or application for permit, title or tag by the staff of  
68 the agency due to a lack of information and/or documentation  
69 unless the return or refusal is in response to a representation by  
70 the person who filed the claim, request for waiver or application  
71 in issue that information and/or documentation indicated by the  
72 staff of the agency to be lacking can not or will not be provided.

73 (f) "Designated representative" means an individual who  
74 represents a person in an administrative appeal before a hearing  
75 officer of the agency, before the board of review or before the  
76 commission.

77 (g) "Last known address" when referring to the mailing  
78 of a notice of intent to suspend, revoke or to order the surrender

79 and/or seizure of the permit, tag or title or to the mailing of a  
80 denial of permit, tag or title, means the last mailing address of  
81 the person being sent the notice as it appears on the record of  
82 the agency in regard to the permit, tag or title in issue. All  
83 other references to "last known address" in Sections 1 through 10  
84 of this act mean the official mailing address that the hearing  
85 officer, the board of review or the commission secretary has for  
86 the addressee in their file on the administrative appeal in which  
87 the document or item is being mailed to the addressee. The  
88 addressee is presumed to have received any document or item mailed  
89 to his official mailing address. The commissioner by regulation  
90 shall prescribe the procedure for establishing an official mailing  
91 address in the administrative appeal process and the procedure for  
92 changing the official mailing address. It is the responsibility  
93 of the addressee to make sure that his official mailing address is  
94 correct.

95 (h) "Mail", "mailed" or "mailing" means placing the  
96 document or item referred to in First Class United States Mail,  
97 postage prepaid, addressed to the person to whom the document or  
98 item is to be sent at the last known address of that person.  
99 Where a person is represented in an administrative appeal before a  
100 hearing officer, the board of review or the commission by a  
101 designated representative, the terms "mail", "mailed" or "mailing"  
102 when referring to sending a document or item to that person shall  
103 also mean placing the document or item referred to in First Class  
104 United States Mail, postage prepaid, to the last known address of  
105 that person's designated representative. Mailing to the  
106 designated representative of a taxpayer, permittee, tag holder or  
107 title interest holder shall constitute mailing and notice to the  
108 taxpayer, permittee, tag holder or title interest holder.

109 (i) "Permit" means a type of license or permit that the  
110 agency is authorized to issue, suspend or revoke, such as a sales  
111 tax permit, a beer permit, a tobacco permit, a dealer license, or

112 designated agent status, but does not include any type of permit  
113 issued under the Local Option Alcoholic Beverage Control Law,  
114 Section 67-1-1, et seq. or under the Mississippi Native Wine Law  
115 of 1976, Section 67-5-1, et seq.

116 (j) "Permittee" means a person holding a permit,  
117 applying for a permit or renewing a permit.

118 (k) "Person" means a natural person, partnership,  
119 limited partnership, corporation, limited liability company,  
120 estate, trust, association, joint venture, other legal entity or  
121 other group or combination acting as a unit, and includes the  
122 plural as well as the singular in number. "Person" includes the  
123 state, county, municipal, other political subdivision and any  
124 agency, institution or instrumentality thereof, but only when used  
125 in the context of a taxpayer, permittee, tag holder, or title  
126 interest holder.

127 (l) "Refund Claim" means a claim made in writing by a  
128 taxpayer and received by the agency wherein the taxpayer indicates  
129 that he overpaid taxes to the agency and requests a refund of the  
130 overpayment and/or a credit against current or future taxes for  
131 the overpayment.

132 (m) "Resident" when used to describe a taxpayer or  
133 petitioner, means a natural person whose residence and place of  
134 abode is within the State of Mississippi.

135 (n) "Tag" means a type of license tag or plate for a  
136 motor vehicle or trailer that the agency is authorized under  
137 Mississippi Motor Vehicle Privilege Tax Law, Sections 27-19-1, et  
138 seq., or under the Motor Vehicle Dealer Tag Permit Law, Sections  
139 27-19-301, et seq., to issue or approve before issuance, but does  
140 not include other types of license tags or plates issued by the  
141 county tax collectors except for personalized license tags and  
142 only to the extent that the agency determines under Section  
143 27-19-48 that a personalized license tag applied for is considered  
144 obscene, slandering, insulting or vulgar in ordinary usage or

145 demands the surrender or orders the seizure of the tag where  
146 issued in error.

147 (o) "Tag holder" means the person in whose name a tag  
148 is registered or the person applying for a tag.

149 (p) "Tag penalty" means the penalties imposed under  
150 Sections 27-19-63 and 27-51-43 for any delinquency in the payment  
151 of motor vehicle privilege tax and ad valorem tax on a motor  
152 vehicle which can be waived by the agency for good reason shown.  
153 Pursuant to Section 27-51-103, imposition of this ad valorem tag  
154 penalty at the maximum rate of twenty-five percent (25%) also  
155 results in ineligibility for the credit against motor vehicle ad  
156 valorem taxes provided by that statute. Waiver of the twenty-five  
157 percent (25%) delinquency penalty by the agency under Section  
158 27-51-43 shall reinstate credit eligibility.

159 (q) "Tax" means a tax, fee, penalty and/or interest  
160 which the agency is required by either general law or by local and  
161 private law to administer, assess and collect.

162 (r) "Taxpayer" means a person who is liable for or paid  
163 any tax to the agency.

164 (s) "Title" means a title to a motor vehicle or  
165 manufactured housing issued by the agency under the Mississippi  
166 Motor Vehicle Title Law, Section 63-21-1 et seq.

167 (t) "Title interest holder" shall mean the owner or  
168 lienholder in a motor vehicle or manufactured housing as indicated  
169 on a title issued by the agency or as indicated on an application  
170 to the agency for the issuance of a title.

171 **SECTION 2.** (1) There is hereby created a board of review  
172 within the agency to conduct the duties assigned to it in Sections  
173 1 through 10 of this act and any other responsibility as assigned  
174 by the commissioner. The board of review shall be composed of  
175 qualified employees of the agency appointed to the board by the  
176 commissioner. The commissioner shall determine the number of  
177 members on the board of review and may increase or decrease this

178 number as needed. The commissioner is authorized to remove and/or  
179 replace a member of the board of review with or without cause.

180 (2) The board of review may perform its duties and  
181 responsibilities en banc or in panels of not less than three (3)  
182 members. When an appeal or other matter is considered by a panel,  
183 only the members on that panel may deliberate and vote on the  
184 appeal or matter being considered. The decision of a panel shall  
185 be deemed the final decision of the board of review. Nothing in  
186 this section shall prevent a member of the board of review from  
187 attending and/or participating in a hearing on an appeal being  
188 conducted before a panel on which he is not a member.

189 (3) No business shall be transacted by either the board of  
190 review en banc or by a panel of the board of review without the  
191 presence of a quorum. Three (3) members shall constitute a quorum  
192 for both the board of review and a panel of the board of review.

193 (4) The commissioner shall designate one (1) member of the  
194 board of review to be the chairman of the board of review. The  
195 chairman of the board of review shall preside at any meeting or  
196 hearing of the board of review en banc and at any meeting or  
197 hearing of a panel of the board of review where he is a member of  
198 that panel. In case of the absence of the chairman of the board  
199 of review at a meeting or hearing of the board of review en banc  
200 or in the case of a meeting or hearings of a panel of which he is  
201 not a member, the chairman of the board of review shall designate  
202 another member of the board of review to preside at the meeting or  
203 hearing. If circumstances do not permit such designation prior to  
204 the meeting or hearing being convened, the member of the board of  
205 review with the most tenure on the board of review shall preside.  
206 The presiding officer of a meeting or hearing of the board of  
207 review en banc or of a panel of the board of review, shall be  
208 responsible for the taking of minutes of such meeting or hearing.

209 **SECTION 3.** (1) Any taxpayer aggrieved by an assessment of  
210 tax by the agency, by the agency's denial of a refund claim, or by

211 the denial of a waiver of tag penalty, and who wishes to contest  
212 the action of the agency shall, within thirty (30) days from the  
213 date of the action, file an appeal in writing with the board of  
214 review requesting a hearing and correction of the contested action  
215 specifying in detail the relief requested and any other  
216 information that might be required by regulation. Failure to  
217 timely file a complete and written appeal with the board of review  
218 within this thirty-day period shall make the agency's tax  
219 assessment, refund claim denial or denial of waiver of tag penalty  
220 final and not subject to further review by the board of review,  
221 the commission or a court except as to the issue of whether a  
222 complete and written appeal to the board of review was timely  
223 filed.

224 (2) Upon receipt of a timely written appeal from a tax  
225 assessment, refund claim denial or denial of waiver of a tag  
226 penalty, a hearing shall be scheduled before the board of review  
227 unless it is determined that the relief requested in the written  
228 appeal should be granted without a hearing. A notice of the  
229 hearing shall be mailed to the taxpayer advising the taxpayer of  
230 the date, time and location of the hearing. The taxpayer or his  
231 designated representative shall attend the hearing unless a  
232 request is made to, and granted by, the board of review to allow  
233 the taxpayer to submit his position in writing or by electronic  
234 transmission in lieu of attendance. Failure of the taxpayer or  
235 his designated representative to attend a hearing or to submit his  
236 position in writing or by electronic transmission by the date  
237 specified by the board of review or by the hearing date, if no  
238 date was specified, shall constitute a withdrawal of the appeal.

239 (3) At a hearing before the board of review on a tax  
240 assessment, denial of refund claim, or denial of waiver of a tag  
241 penalty, the board of review shall try the issues presented,  
242 according to law and the facts and within the guidelines  
243 established by regulation. The hearing before the board of review

244 shall be informal and no official transcript will be made of the  
245 hearing. At the earliest practical date after the hearing, the  
246 members of the board of review that heard the appeal shall make a  
247 determination on the matter presented and notify the taxpayer of  
248 its findings by mailing a copy of its order to the taxpayer. If  
249 the order involves the appeal of a denial of a waiver of tag  
250 penalty, a copy of the order shall also be mailed to the tax  
251 collector that imposed the penalty. If in the order, the board of  
252 review orders the taxpayer to pay a tax assessment, the taxpayer  
253 shall, within thirty (30) days from the date of the order, pay the  
254 amount ordered to be paid or appeal the order of the board of  
255 review to the commission. After the thirty-day period, if the tax  
256 determined by the board of review to be due is not paid and an  
257 appeal from the order of the board of review is not made to the  
258 commission, the agency shall proceed to collect the tax assessment  
259 as determined by the board of review.

260 (4) Any taxpayer aggrieved by an order of the board of  
261 review affirming a tax assessment, the denial of a refund claim,  
262 or the denial of a waiver of tag penalty, and who wishes to  
263 contest the order shall, within thirty (30) days from the date of  
264 the order of the board of review being contested, file an appeal  
265 to the commission. The appeal shall be in writing and shall  
266 request a hearing and reversal or modification of the order of the  
267 board of review, specify in detail the relief requested and  
268 contain any other information that might be required by  
269 regulation, and be filed with the commission secretary. Failure  
270 to timely file a complete and written appeal with the commission  
271 secretary within the thirty-day period shall make the order of the  
272 board of review final and not subject to further review by the  
273 commission or a court, other than as to the issue of whether a  
274 complete and written appeal from the order of the board of review  
275 was timely filed with the commission secretary.



276           (5) Upon receipt of a written appeal from an order of the  
277 board of review affirming a tax assessment, refund claim denial or  
278 denial of waiver of a tag penalty, the commission secretary shall  
279 schedule a hearing before the commission on the appeal. A notice  
280 of this hearing shall be mailed to the taxpayer advising the  
281 taxpayer of the date, time and location of hearing. The taxpayer  
282 or his designated representative shall attend the hearing unless a  
283 request is made to and granted by the commission to allow the  
284 taxpayer to submit his position in writing or by electronic  
285 transmission in lieu of attendance. Failure of the taxpayer or  
286 his designated representative to attend a hearing or to submit his  
287 position in writing or by electronic transmission by the date  
288 specified by the commission or by the hearing date, if no date was  
289 specified, shall constitute a withdrawal of the appeal.

290           (6) At any hearing before the commission on an appeal of an  
291 order of the board of review affirming a tax assessment, refund  
292 claim denial or denial of waiver of a tag penalty, two (2) members  
293 of the commission shall constitute a quorum. At the hearing, the  
294 commission shall try the issues presented, according to the law  
295 and the facts and pursuant to any guidelines established by  
296 regulation. The rules of evidence shall be relaxed at the  
297 hearing. Any appeal to chancery court from an order of the  
298 commission resulting from this type of hearing shall include a  
299 full evidentiary judicial hearing on the issues presented. No  
300 official transcript shall be made of this hearing before the  
301 commission. After reaching a decision on the issues presented,  
302 the commission shall enter its order setting forth its findings  
303 and decision on the appeal. A copy of the order of the commission  
304 shall be mailed to the taxpayer. If the order involves an appeal  
305 of a denial of a waiver of tag penalty, a copy of the order shall  
306 also be mailed to the tax collector that imposed the penalty.

307           (7) If in its order the commission orders a taxpayer to pay  
308 a tax assessment, the taxpayer shall, within thirty (30) days from

309 the date of the order, pay the amount ordered to be paid or  
310 properly appeal said order of the commission to chancery court as  
311 provided in Section 4 of this act. After the thirty-day period,  
312 if the tax determined by the commission to be due is not paid and  
313 an appeal from the commission order has not been properly filed,  
314 the agency shall proceed to collect the tax assessment as affirmed  
315 by the commission. If in its order, the Commission determines  
316 that the taxpayer has overpaid his taxes, the agency shall refund  
317 or credit to the taxpayer, as provided by law, the amount of  
318 overpayment as determined and set out in the order.

319 (8) At any time after the filing of an appeal to the board  
320 of review or from the board of review to the commission under this  
321 section, an appeal can be withdrawn. Such a withdrawal of an  
322 appeal may be made voluntarily by the taxpayer or may occur  
323 involuntarily as a result the taxpayer failing to appear at a  
324 scheduled hearing, failing to make a written submission or  
325 electronic transmission in lieu of attendance at a hearing by the  
326 date specified or by the hearing date, if no date was specified,  
327 or by any other act or failure that the board of review or the  
328 commission determines represents a failure on the part of the  
329 taxpayer to prosecute his appeal. Any voluntary withdrawal shall  
330 be in writing or by electronic transmission and sent by the  
331 taxpayer or his designated representative to the chairman of the  
332 board of review, if the appeal being withdrawn is to the board of  
333 review, or to the commission secretary, if the appeal being  
334 withdrawn is to the commission. If the withdrawal of appeal is  
335 involuntary, the administrative appeal body from whom the appeal  
336 is being withdrawn shall note on its minutes the involuntary  
337 withdrawal of the appeal and the basis for the withdrawal. Once  
338 an appeal is withdrawn, whether voluntary or involuntary, the  
339 action from which the appeal was taken, whether a tax assessment,  
340 a denial of refund claim, a denial of waiver of tax penalty, or an  
341 order of the board of review, shall become final and not subject

342 to further review by the board of review, the commission or a  
343 court. The agency shall then proceed in accordance with law based  
344 on such final action.

345 **SECTION 4.** (1) The findings and order of the commission  
346 entered under Section 3 of this act shall be final unless the  
347 taxpayer shall, within thirty (30) days from the date of the  
348 order, file a petition in the chancery court appealing the order  
349 and paying the tax and/or post the bond as required in Sections 1  
350 through 10 of this act. The petition shall be filed against the  
351 State Tax Commission and shall contain a concise statement of the  
352 facts as contended by the taxpayer, identify the order from which  
353 the appeal is being taken and set out the type of relief sought.  
354 If in the action, the taxpayer is seeking a refund or credit for  
355 an alleged overpayment of tax or for taxes paid in protest under  
356 subsection (3) of this section, the taxpayer shall allege in the  
357 petition that he alone bore the burden of the tax sought to be  
358 refunded or credited and did not directly or indirectly collect  
359 the tax from anyone else.

360 (2) A petition under subsection (1) of this section shall be  
361 filed in the chancery court of the county or judicial district in  
362 which the taxpayer has a place of business or in the First  
363 Judicial District of Hinds County, Mississippi; however, a  
364 resident taxpayer may file the petition in the chancery court of  
365 the county or judicial district in which he is a resident.

366 (3) A petition filed under subsection (1) of this section  
367 that appeals an order of the commission affirming a tax  
368 assessment, shall be accompanied by a surety bond approved by the  
369 clerk of the court in a sum double the amount in controversy,  
370 conditioned to pay the judgment of the court. The clerk shall not  
371 approve a bond unless the bond is issued by a surety company  
372 qualified to write surety bonds in this State. As an alternative  
373 to the posting of bond, a taxpayer appealing an order of the  
374 commission affirming a tax assessment may, prior to the filing of

375 the petition, pay to the agency, under protest, the amount ordered  
376 by the commission to be paid and seek a refund of such taxes, plus  
377 interest thereon, and post with the clerk a bond for court costs  
378 in an amount of not less than Five Hundred Dollars (\$500.00).

379 (4) A petition filed under subsection (1) of this section  
380 that appeals an order of the commission affirming the denial of a  
381 refund claim or the denial of a waiver of tag penalty, shall be  
382 accompanied by a bond for court costs approved by the clerk of the  
383 court in an amount of not less than Five Hundred Dollars  
384 (\$500.00).

385 (5) Upon the filing of the petition under subsection (1) of  
386 this section, the clerk of the court shall issue a summons to the  
387 State Tax Commission requiring the commission to answer or  
388 otherwise respond to the petition within thirty (30) days of  
389 service. The summons shall be served on the State Tax Commission  
390 by personal service on the commissioner as the chief executive  
391 officer of the State Tax Commission. The chancery court in which  
392 a petition under subsection (1) of this section is properly filed  
393 shall have jurisdiction to hear and determine said cause or issues  
394 joined as in other cases. In any petition in which the taxpayer  
395 is seeking a refund or credit for an alleged overpayment of tax or  
396 for taxes paid under protest under subsection (3) of this section,  
397 the taxpayer shall prove that he alone bore the burden of the tax  
398 sought to be refunded or credited and did not directly or  
399 indirectly collect the tax from anyone else. At trial of any  
400 action brought under this section, the chancery court shall give  
401 deference to the decision and interpretation of the commission as  
402 it does with the decisions and interpretation of any  
403 administrative agency, but it shall try the case de novo and  
404 conduct a full evidentiary judicial hearing on the issues raised.  
405 Based on the evidence presented at the hearing, the chancery court  
406 shall determine whether the taxpayer has proven that he is  
407 entitled to any or all of the relief he has requested. The

408 chancery court shall decide all questions presented, including  
409 those as to legality and the amount of tax or refund due, and if  
410 it finds that the tax assessment or denial of refund claim in  
411 issue is incorrect or invalid, in whole or in part, it shall  
412 determine the amount of tax or refund due, including interest and,  
413 if applicable, penalty to date, and enter such order or judgment  
414 as it deems proper. Interest and penalty included in this  
415 determination shall be computed by the court based on the methods  
416 for computing penalty and interest as specified by law for the  
417 type of tax in issue. Either the State Tax Commission or the  
418 taxpayer, or both, shall have the right to appeal from the order  
419 of the chancery court to the Supreme Court as in other cases. If  
420 an appeal is taken from the order of the chancery court, the bonds  
421 provided for in subsections (3) and (4) of this section shall  
422 continue to remain in place until a final decision is rendered in  
423 the case. Courts shall give deference to the decision and  
424 interpretation of the commission as it does with the decision and  
425 interpretation of any administrative agency.

426       **SECTION 5.** (1) If the agency determines that there is a  
427 basis for suspension, surrender, seizure or revocation of a  
428 permit, tag or title issued or approved by the agency, the agency  
429 shall give the permittee, tag holder, title interest holder in the  
430 permit, tag or title, written notice of its intent to suspend,  
431 revoke or to order the surrender and/or seizure of the permit, tag  
432 or title. The notice of intent shall be mailed or hand delivered  
433 to the permittee, tag holder or title interest holder involved,  
434 shall set forth the facts and conduct that provide the basis for  
435 the intended action and shall advise the permittee, tag holder or  
436 title interest holder involved of the date, time and location of a  
437 show cause hearing that is at a minimum of thirty (30) days from  
438 the date of the notice. At the hearing, the permittee, tag holder  
439 or title interest holder shall show cause why the permit, tag or  
440 title in issue should not be suspended, surrendered, seized or

441 revoked. The show cause hearing shall be informal and the rules  
442 of evidence shall be relaxed. The hearing shall be conducted by  
443 the board of review or by a single hearing officer as designated  
444 by the commissioner. As soon as practical after the show cause  
445 hearing, the hearing officer or the members of the board of review  
446 that conducted the hearing shall make a determination as to  
447 whether the intended action or any other action should be taken in  
448 regard to the permit, tag or title in issue. The hearing officer  
449 or board of review shall enter an order based on this  
450 determination and a copy of this order shall be mailed to the  
451 permittee, tag holder or title interest holder involved notifying  
452 same of the decision and the action taken.

453 (2) The order of the hearing officer or the board of review  
454 in regard to a show cause hearing shall be final unless, within  
455 thirty (30) days from the date of said order, the permittee, tag  
456 holder or title interest holder appeals the order to the  
457 commission. The appeal shall be in writing and request a hearing  
458 and reversal or modification of the order of the hearing officer  
459 or board of review, specify in detail the relief requested,  
460 contain any other information that might be required by regulation  
461 and be filed with the commission secretary. Failure to timely  
462 file a complete and written appeal with the commission secretary  
463 within the thirty-day period shall make the order of the hearing  
464 officer or the board of review being appealed final and not  
465 subject to further review by the commission or a court other than  
466 as to the issue of whether a complete and written appeal from the  
467 order of the hearing officer or board of review was timely filed  
468 with the commission secretary.

469 (3) Upon receipt of a written appeal from an order of a  
470 hearing officer or the board of review regarding a show cause  
471 hearing on a permit, tag or title, the commission secretary shall  
472 schedule a hearing before the commission on this appeal. A notice  
473 of the hearing shall be mailed to the person who filed the appeal

474 to advise him of the date, time and location of hearing. In the  
475 case of an appeal from a show cause hearing on a title, the notice  
476 of hearing shall also be mailed to any other title interest  
477 holders in the motor vehicle or manufactured housing in issue.  
478 The person who filed the appeal or his designated representative  
479 shall attend the hearing. Failure of this person or his  
480 designated representative to attend a hearing shall constitute a  
481 withdrawal of the appeal.

482 (4) At any hearing before the commission on an appeal of an  
483 order regarding a show cause hearing on a permit, tag or title,  
484 two (2) members of the commission shall constitute a quorum. At  
485 the hearing the commission shall try the issues presented  
486 according to law and the facts and pursuant to any guidelines  
487 established by regulation. The rules of evidence shall be relaxed  
488 at the hearing and the hearing shall be taken down by a court  
489 reporter. After reaching a decision on the issues presented, the  
490 commission shall enter an order setting forth its findings and  
491 decision on the appeal. A copy of the order of the commission  
492 shall be mailed to the person who filed the appeal to notify him  
493 of the findings and decision of the commission. In the case of an  
494 appeal involving a title, a copy of the order of the commission  
495 shall also be mailed to any other title interest holder in the  
496 motor vehicle or manufactured housing in issue.

497 (5) At any time after the filing of an appeal with the  
498 commission under this section, an appeal may be withdrawn. A  
499 withdrawal of an appeal can be made voluntarily by the person  
500 appealing or may occur involuntarily as the result of his failure  
501 to appear at a scheduled hearing, or by any other act or failure  
502 that the commission determines represents a failure on the part of  
503 that person to prosecute his appeal. A voluntary withdrawal shall  
504 be in writing or by electronic transmission and sent from the  
505 person appealing or his designated representative to the  
506 commission secretary. If the withdrawal of appeal is involuntary,

507 the commission shall note on its minutes the involuntary  
508 withdrawal of the appeal and the basis for the withdrawal. Once  
509 an appeal is withdrawn, whether voluntary or involuntary, the  
510 order from the show cause hearing from which the appeal was taken  
511 shall become final and not subject to further review by the  
512 commission or a court. The agency shall then proceed in  
513 accordance with law based on such final action.

514 **SECTION 6.** (1) If the agency determines that an application  
515 or request for a permit, tag or title issued or approved by the  
516 agency should be denied, the agency shall give the applicant for  
517 the permit, tag or title written notice of the denial by mailing  
518 or hand delivering the notice to the applicant. In regard to the  
519 denial of an application for title, the designated agent who took  
520 the application and any other alleged title interest holders as  
521 appearing on the application shall also be mailed or hand  
522 delivered a copy of the agency's denial of the title application.  
523 If the applicant, or in the case of the denial of a title  
524 application, any title interest holder appearing on the title  
525 application, is aggrieved by the denial and wishes to contest the  
526 denial, he shall, within thirty (30) days from the date of the  
527 written notice of the denial, file an appeal in writing with the  
528 board of review requesting a hearing on the denial that specified  
529 in detail the relief requested and contains any other information  
530 required by regulation. Failure to timely file a complete and  
531 written appeal with the board of review within this thirty-day  
532 period shall make final the agency's denial of the permit, tag or  
533 title in issue and not subject to further review by the board of  
534 review, the commission or a court except as to the issue of  
535 whether a complete and written appeal to the board of review was  
536 timely filed.

537 (2) Upon receipt of a written appeal from a denial of a  
538 permit, tag or title, a hearing shall be scheduled before the  
539 board of review unless it is determined that the relief requested



540 in the written appeal should be granted without a hearing. A  
541 notice of the hearing shall be mailed to the person appealing  
542 advising him of the date, time and location of hearing. If the  
543 appeal involves the denial of a title, the notice of hearing shall  
544 also be mailed to all other title interest holders in the motor  
545 vehicle or manufactured housing in issue, including both those  
546 that appear on a current title and those that appear on the  
547 application that was denied. The notice may contain a statement  
548 as to the basis for the denial of the permit, tag or title. The  
549 person appealing, or his designated representative, shall attend  
550 the hearing unless a request is made to and granted by the board  
551 of review to allow him to submit his position in writing or by  
552 electronic transmission in lieu of attendance. Failure of the  
553 person appealing, or his designated representative, to attend a  
554 hearing or to submit his position in writing or by electronic  
555 transmission in lieu of attendance by the date specified by the  
556 board of review or by the hearing date, if no date is specified,  
557 shall constitute a withdrawal of the appeal.

558 (3) At a hearing before the board of review on a denial of a  
559 permit, tag or title, the board of review shall try the issues  
560 presented, according to law and the facts and within the  
561 guidelines established by regulation. The hearing before the  
562 board of review shall be informal and no official transcript shall  
563 be made of the hearing. At the earliest practical date after the  
564 hearing, the members of the board of review that heard the appeal  
565 shall make a determination on the matter presented and notify the  
566 person appealing of its findings by mailing a copy of its order to  
567 that person. In the case of a hearing involving the denial of a  
568 title, the order shall also be mailed to all other title interest  
569 holders in the motor vehicle or manufactured housing in issue,  
570 including those that appear on a current title and those that  
571 appear on the application that was denied.

572           (4) The order of the board of review involving the denial of  
573 a permit, tag or title shall be final unless within thirty (30)  
574 days from the date of the order, the applicant appeals the order  
575 to the commission. In the case of an order of the board of review  
576 involving a review of the denial of a title, any title interest  
577 holder in the motor vehicle or manufactured housing in issue may  
578 appeal the order to the commission. The appeal shall be in  
579 writing, request a hearing and reversal or modification of the  
580 order of the board of review, specify in detail the relief  
581 requested, contain any other information that is required by  
582 regulation and be filed with the commission secretary. Failure to  
583 timely file a complete and written appeal with the commission  
584 secretary within the thirty-day period will make the order of the  
585 board of review being appealed final and not subject to further  
586 review by the commission or a court other than as to the issue of  
587 whether a complete and written appeal from the order of the board  
588 of review was timely filed with the commission secretary.

589           (5) Upon receipt of a written appeal from an order of the  
590 board of review involving the denial of a permit, tag or title,  
591 the commission secretary shall schedule a hearing before the  
592 commission on the appeal. A notice of the hearing shall be mailed  
593 to the person who filed the appeal to advise him of the date, time  
594 and location of hearing. In the case of an appeal from an order  
595 of the board of review involving the denial of a title, the notice  
596 of hearing shall also be mailed to all title interest holders in  
597 the motor vehicle or manufactured housing in issue. The person  
598 who filed the appeal or his designated representative shall attend  
599 the hearing. Failure of this person or his designated  
600 representative to attend a hearing shall constitute a withdrawal  
601 of the appeal.

602           (6) At any hearing before the commission on an appeal of an  
603 order from the board of review involving the denial of a permit,  
604 tag or title, two (2) members of the commission shall constitute a

605 quorum. At the hearing, the commission shall try the issues  
606 presented according to law and the facts and pursuant to any  
607 guidelines established by regulation. The rules of evidence shall  
608 be relaxed at the hearing and the hearing shall be taken down by a  
609 court reporter. After reaching a decision on the issues  
610 presented, the commission shall enter its order setting forth its  
611 findings and decision on the appeal. A copy of the order of the  
612 commission shall be mailed to the person who filed the appeal with  
613 the commission to notify him of the findings and decision of the  
614 commission. In the case of an appeal involving a title, a copy of  
615 the order of the commission shall also be mailed to all title  
616 interest holders in the motor vehicle or manufactured housing in  
617 issue.

618 (7) At any time after the filing of an appeal with the board  
619 of review, or from the board of review to the commission under  
620 Sections 1 through 10 of this act, an appeal can be withdrawn. A  
621 withdrawal of an appeal may be made voluntarily by the person who  
622 filed the appeal or may occur involuntarily by the person failing  
623 to appear at a scheduled hearing, by failing to make a written  
624 submission or electronic transmission to the board of review in  
625 lieu of attendance by the date specified by the board or by the  
626 hearing date, if no date was specified, or by any other act or  
627 failure that the board of review or the commission determines  
628 represents a failure on the part of this person to prosecute his  
629 appeal. Any voluntary withdrawal shall be in writing or by  
630 electronic transmission and sent by the person appealing or his  
631 designated representative to the chairman of the board of review,  
632 if the appeal being withdrawn is to the board of review, or to the  
633 commission secretary, if the appeal being withdrawn is to the  
634 commission. If the withdrawal of appeal is involuntary, the  
635 administrative appeal body from whom the appeal is being withdrawn  
636 shall note on its minutes the involuntary withdrawal of the appeal  
637 and the basis for the withdrawal. Once an appeal is withdrawn,

638 whether voluntary or involuntary, the action from which the appeal  
639 was taken, whether the original denial or the order of the board  
640 of review, shall become final and not subject to further review by  
641 the board of review, the commission or a court. The agency shall  
642 then proceed in accordance with law based on such final action.

643 **SECTION 7.** (1) The order of the commission entered in  
644 accordance with Sections 5 or 6 of this act shall be final unless  
645 the permittee, tag holder, or title interest holder of the permit,  
646 tag or title in regard to which action was taken in the order  
647 shall, within thirty (30) days from the date of the order, file a  
648 petition in the chancery court seeking a review of the order. The  
649 petition shall be filed against the State Tax Commission and shall  
650 contain a concise statement of the facts as contended by the  
651 petitioner, identify the order from which the appeal is being  
652 taken and the type of relief sought. The petition shall also  
653 contain a certificate that the petitioner has paid to the  
654 commission secretary the estimated cost of the preparation of the  
655 entire record of the commission on the matter for which a review  
656 is sought.

657 (2) A petition under subsection (1) of this section shall be  
658 filed in the chancery court of the county or judicial district in  
659 which the petitioner has a place of business or in the First  
660 Judicial District of Hinds County, Mississippi; however, a  
661 resident petitioner may file a petition in the chancery court of  
662 the county or judicial district in which he is a resident.

663 (3) A petition filed under subsection (1) of this section  
664 shall be accompanied by a bond for court costs approved by the  
665 clerk of the court in an amount of at not less than Five Hundred  
666 Dollars (\$500.00).

667 (4) The review by the chancery court of the order of the  
668 commission on a petition filed under subsection (1) of this  
669 section shall be based on the record made before the commission.  
670 Before filing a petition under subsection (1) of this section, the

671 petitioner shall obtain from the commission secretary an estimate  
672 of the cost to prepare the entire record of the commission and  
673 shall pay to the commission secretary the amount of the estimate.  
674 If, upon the preparation of the record, it is determined that the  
675 estimate paid was insufficient to pay the actual cost of the  
676 preparation of the record, the commission secretary shall mail to  
677 the petitioner a written notice of the deficiency. The petitioner  
678 shall pay the deficiency to the commissioner secretary within  
679 thirty (30) days from the date of this written notice. If upon  
680 the preparation of the record, it is determined that the estimate  
681 paid by the petitioner exceeds the actual cost of the preparation  
682 of the record, the commission secretary shall remit to the  
683 petitioner the amount by which the estimate paid exceeds the  
684 actual cost. The chancery court shall dismiss with prejudice any  
685 petition filed where it is shown that the petitioner failed to pay  
686 prior to filing the petition the estimated cost for preparation of  
687 the record of the commission or failed to pay any deficiency in  
688 the estimate within thirty (30) days of a notice of deficiency.

689 (5) Upon the filing of the petition under subsection (1) of  
690 this section, the clerk of the court in the which the petition is  
691 filed shall issue a summons to the State Tax Commission requiring  
692 the commission to answer or otherwise respond to the petition  
693 within thirty (30) days of service. The summons shall be served  
694 on the State Tax Commission by personal service on the  
695 commissioner as the chief executive officer of the State Tax  
696 Commission.

697 (6) Upon the filing of an answer and/or response by the  
698 State Tax Commission to the petition filed under subsection (1) of  
699 this section, and upon the filing of the record made before the  
700 commission with the clerk of the court, the chancery court shall,  
701 upon the motion of either party, established a schedule for the  
702 filing of briefs in the action. The scope of review of the  
703 chancery court in an action filed under subsection (1) of this

704 section shall be limited to a review of the record made before the  
705 commission to determine if the action of the commission is  
706 unlawful for the reason that it was:

- 707 (a) Not supported by substantial evidence;
- 708 (b) Arbitrary or capricious;
- 709 (c) Beyond the power of the commission to make; or
- 710 (d) In violation of some statutory or constitutional  
711 right of the petitioner.

712 (7) No relief shall be granted based upon the chancery  
713 court's finding of harmless error by the commission in complying  
714 with any procedural requirement; however, in the event that there  
715 is a finding of prejudicial error in the proceedings, the cause  
716 shall be remanded to the commission for a rehearing consistent  
717 with the findings of the court.

718 (8) The State Tax Commission, the petitioner, or both, shall  
719 have the right to appeal from the order of the chancery court to  
720 the Supreme Court as in other cases. If an appeal is taken from  
721 the order of the chancery court, the bond provided for in  
722 subsection (3) of this section shall continue to remain in place  
723 until a final decision is rendered in the case.

724 **SECTION 8.** (1) Except as otherwise provided in this  
725 section, it shall be unlawful for the commission, the  
726 commissioner, the commission secretary, the agency, or an officer,  
727 agent or employee of the agency, to divulge or make known in any  
728 manner the information contained in the files, records and orders  
729 of the agency, a hearing officer of the agency, the board of  
730 review or the commission in regard to an appeal to a hearing  
731 officer, the board of review or the commission under Sections 1  
732 through 10 of this act.

733 (2) For purposes of this section, the term "appellant" means  
734 the taxpayer, permittee, tag holder or title interest holder who  
735 filed the appeal to the board of review or the commission under  
736 Sections 1 through 10 of this act which resulted in the files,

737 records and orders of that appeal. For purposes of this section,  
738 when applied to the files, records and orders regarding a matter  
739 brought before a hearing officer of the agency or before the board  
740 of review for a show cause hearing, the term "appellant" shall  
741 mean the permittee, tag holder or title interest holder in the  
742 permit, tag or title that was the subject of the show cause  
743 hearing.

744 (3) The commission, the commissioner, the commission  
745 secretary, the agency, hearing officer or an agent or employee of  
746 the agency is permitted to divulge and make known information  
747 otherwise prohibited from disclosure under subsection (1) of this  
748 section in any of the following circumstances:

749 (a) Where the information is being disclosed as a  
750 result of complying with the provisions of Sections 1 through 10  
751 of this act and/or with regulations promulgated to enforce the  
752 provisions of Sections 1 through 10 of this act.

753 (b) Where the information is being provided to the  
754 appellant or his designated representative.

755 (c) Where the information is being provided or  
756 disclosed pursuant to a written authorization executed by the  
757 appellant as prescribed by regulation.

758 (d) Where the information is being provided or  
759 disclosed in the course of a court action in which the agency, the  
760 commission, an agency officer or an agency employee and the  
761 appellant are parties, including, but not limited to, an action  
762 brought under Sections 1 through 10 of this act or in the course  
763 of the bankruptcy case of the appellant.

764 (e) Where the information is being provided to the  
765 Internal Revenue Service or a taxing authority of another state  
766 under an information exchange agreement where similar information  
767 can be obtained by the agency from the Internal Revenue Service or  
768 state taxing authority receiving the information.

769           (f) Where the information is being provided pursuant to  
770 the International Registration Plan (IRP) or the International  
771 Fuel Tax Agreement (IFTA) or any regulations, rules or procedures  
772 adopted under such plan or agreement.

773           (g) Where the disclosure of information is authorized  
774 under Section 27-55-49, 27-55-557, 27-57-39, 27-59-53 or 27-61-20.

775           (h) Where the information is being provided to the  
776 State Auditor or his employees in the course of his audit of the  
777 agency; however, the prohibitions against disclosure which apply  
778 to the agency shall also apply to the State Auditor and his  
779 employees or former employees.

780           (i) Where the information is being provided to the  
781 Attorney General or any other attorney representing the state or  
782 the agency in an action brought by the appellant to set aside the  
783 tax, in an action brought by the state or agency to recover the  
784 tax imposed, or in an action where the appellant is being  
785 prosecuted for a crime under the tax laws of this State.

786           (j) Where the information is being provided by the  
787 commissioner to a contractor of collection services pursuant to  
788 the authority granted the commissioner in Section 27-75-16.

789           (k) Where the information is being provided in  
790 accordance with a proper judicial order. The term "proper  
791 judicial order" as used in this paragraph shall not include  
792 subpoenas or subpoenas duces tecum, but shall include only those  
793 orders entered by a court of record in this state after furnishing  
794 notice and a hearing to the appellant and the State Tax  
795 Commission. The court shall not authorize the furnishing of such  
796 information unless it is satisfied that the information is needed  
797 to pursue pending litigation in which the information itself is in  
798 issue, or the judge is satisfied that the need for furnishing the  
799 information outweighs the rights of the appellant to have such  
800 information secreted.



801           (3) Nothing in subsection (1) of this section shall prohibit  
802 the inspection or disclosure of the minutes of the commission  
803 except to the extent that such minutes reflect the specific amount  
804 of a tax assessment or refund claim or the specific amount of tax  
805 or refund claim determined by the commission to be due.

806           (4) Information that is prohibited from being disclosed in  
807 subsection (1) of this section shall be exempt from the provisions  
808 of the Mississippi Public Records Act of 1983.

809           (5) Due to the need to discuss confidential tax information,  
810 the hearings before a hearing officer, the board of review and the  
811 commission under Sections 1 through 10 of this act, and the  
812 meetings in which the board of review and the commission  
813 deliberate and vote on the issues raised at such hearings shall be  
814 exempt from the provisions of Section 25-41-1 et seq.

815           **SECTION 9.** Except as to the determination of whether a tag  
816 penalty should be waived under Section 27-51-43, the provisions of  
817 Sections 1 through 10 of this act shall not apply to any action  
818 taken by the agency, commissioner or commission in regard to ad  
819 valorem taxes, including, but not limited to, the determination  
820 under Section 27-31-107 as to whether property is entitled to a  
821 new or expanded enterprise exemption, the duties and actions  
822 performed under the Homestead Exemption Law of 1946, being Section  
823 27-33-1 et seq., the actions taken as the result of the  
824 examination of the recapitulation of the assessment rolls of the  
825 counties under Section 27-35-113, the actions relating to the  
826 examination of the assessment rolls under Section 27-35-127, and  
827 the ad valorem assessment of railroads, public service  
828 corporations, nuclear generating plants, railcar companies,  
829 airline companies, motor vehicles, manufactured homes and mobile  
830 homes. The provisions of Sections 1 through 10 of this act shall  
831 not apply to any action of the agency, commissioner or commission  
832 under the Local Option Alcoholic Beverage Control Law, being

833 Section 67-1-1 et seq. or any action under the Mississippi Native  
834 Wine Law of 1976, being Section 67-5-1 et seq.

835 **SECTION 10.** (1) The commissioner may from time to time make  
836 such rules and regulations, not inconsistent with Sections 1  
837 through 10 of this act, as he may deem necessary to enforce its  
838 provisions.

839 (2) By issuance of a subpoena under his signature and seal,  
840 the commissioner may require any person to attend a hearing before  
841 a hearing officer, the board of review or the commission and to  
842 give testimony and/or produce documents or other things at that  
843 hearing. If any person subpoenaed by the commissioner fails to  
844 attend the hearing, refuses to testify or answer any material  
845 question at the hearing or refuses to produce at the hearing any  
846 document or thing subpoenaed, the commissioner is authorized to  
847 institute proceedings in the circuit court of the county where  
848 such person resides or is found to compel compliance with the  
849 subpoena.

850 **SECTION 11.** Section 25-41-3, Mississippi Code of 1972, is  
851 amended as follows:

852 25-41-3. For purposes of this chapter, the following words  
853 shall have the meaning ascribed herein, to wit:

854 (a) "Public body" means \* \* \* any executive or  
855 administrative board, commission, authority, council, department,  
856 agency, bureau or any other policy making entity, or committee  
857 thereof, of the State of Mississippi, or any political subdivision  
858 or municipal corporation of the state, whether such entity be  
859 created by statute or executive order, which is supported wholly  
860 or in part by public funds or expends public funds, and \* \* \* any  
861 standing, interim or special committee of the Mississippi  
862 Legislature. There shall be exempted from the provisions of this  
863 chapter:

864 (i) The judiciary, including all jury  
865 deliberations;

866                   (ii) Public and private hospital staffs, public  
867 and private hospital boards and committees thereof;  
868                   (iii) Law enforcement officials;  
869                   (iv) The military;  
870                   (v) The State Probation and Parole Board;  
871                   (vi) The Workers' Compensation Commission;  
872                   (vii) Legislative subcommittees and legislative  
873 conference committees;  
874                   (viii) The arbitration council established in  
875 Section 69-3-19; \* \* \*  
876                   (ix) License revocation, suspension and  
877 disciplinary proceedings held by the Mississippi State Board of  
878 Dental Examiners; and  
879                   (x) Hearings and meetings of the State Tax  
880 Commission and the hearing officers and the board of review of the  
881 State Tax Commission as provided in Section 8, Senate Bill  
882 No. 2742, 2005 Regular Session.

883                   (b) "Meeting" means an assemblage of members of a  
884 public body at which official acts may be taken upon a matter over  
885 which the public body has supervision, control, jurisdiction or  
886 advisory power; "meeting" also means any such assemblage through  
887 the use of video or teleconference devices.

888                   **SECTION 12.** Section 27-7-51, Mississippi Code of 1972, is  
889 amended as follows:

890                   27-7-51. (1) If, upon examination of a return made under  
891 the provisions of this article, it appears that the correct amount  
892 of tax is greater or less than that shown in the return, the tax  
893 shall be recomputed. Any overpayment of tax so determined shall  
894 be credited or refunded to the taxpayer. If the correct amount of  
895 tax is greater than that shown in the return of the taxpayer, the  
896 commissioner shall make his assessment of additional tax due by  
897 certified mail or by personal delivery of the assessment to the  
898 taxpayer, which assessment shall constitute notice and demand for

899 payment. The taxpayer shall be given a period of thirty (30) days  
900 after receipt of notice in which to pay the additional tax due,  
901 including penalty and interest as hereinafter provided, and if the  
902 sum is not paid within the period of thirty (30) days, the  
903 commissioner shall proceed to collect it under the provisions of  
904 Sections 27-7-55 through 27-7-67, provided that within the period  
905 of thirty (30) days the taxpayer may appeal to the board of review  
906 as provided by law.

907 (2) In the case of an overpayment of tax, interest shall be  
908 computed under the provisions of Section 27-7-315. In the case of  
909 an underpayment of tax, interest at the rate of one percent (1%)  
910 per month from the due date of the return may be added or assessed  
911 in addition to the additional tax due as hereinabove provided in  
912 subsection (1) of this section.

913 (3) In case of failure to pay any additional taxes as  
914 assessed under this section, unless it is shown that the failure  
915 is due to reasonable cause and not due to willful neglect, there  
916 may be added to the additional amount assessed a penalty of  
917 one-half of one percent (1/2 of 1%) of the amount of the  
918 additional tax if the failure is for not more than one (1) month,  
919 with an additional one-half of one percent (1/2 of 1%) for each  
920 additional month or fraction thereof during which the failure  
921 continues, not to exceed twenty-five percent (25%) in the  
922 aggregate.

923 (4) Where the reported net income of a taxpayer is increased  
924 by the Internal Revenue Service, a taxpayer who, without action by  
925 the commissioner, amends a return filed under this article on the  
926 basis of a change in taxable income made by the Internal Revenue  
927 Service, and pays the additional tax due \* \* \* within thirty (30)  
928 days after agreeing to the federal change (and has received  
929 statement of the federal changes to which agreement has been made  
930 or payment thereof), shall add interest to the additional tax at  
931 the rate of one percent (1%) per month from due date of the

932 original return. If the additional tax, based on changes in  
933 taxable income by the Internal Revenue Service, is assessed by the  
934 commissioner under subsection (1) of this section, in addition to  
935 the interest there may be added a penalty of one-half of one  
936 percent (1/2 of 1%) of the additional tax due if the failure is  
937 for not more than one (1) month, with an additional one-half of  
938 one percent (1/2 of 1%) for each additional month or fraction  
939 thereof during which the failure to pay continues, not to exceed  
940 twenty-five percent (25%) in the aggregate, unless it is shown  
941 that the failure is due to reasonable cause and not due to willful  
942 neglect.

943 (5) In the case of a taxpayer who files a bond when  
944 appealing the decision of the full State Tax Commission instead of  
945 paying the amount of the additional tax found to be due by the  
946 State Tax Commission, and the tax assessment or a part of the  
947 assessment is upheld by the chancery court and/or the Supreme  
948 Court, the assessment shall bear interest at the rate of one  
949 percent (1%) per month from the due date until paid.

950 (6) (a) Nothing in this section shall be construed as  
951 authorizing a refund of taxes for claims pursuant to the United  
952 States Supreme Court decision of Davis v. Michigan Department of  
953 Treasury, 109 S.Ct. 1500 (1989). These taxes were not incorrectly  
954 and/or erroneously collected as contemplated by this chapter.

955 (b) In the event a court of final jurisdiction  
956 determines the above provision to be void for any reason, it is  
957 hereby declared the intent of the Legislature that affected  
958 taxpayers shall be allowed a credit against future income tax  
959 liability as opposed to a tax refund.

960 **SECTION 13.** Section 27-7-53, Mississippi Code of 1972, is  
961 amended as follows:

962 27-7-53. (1) If a return is timely filed by the taxpayer  
963 but the tax due is not paid, the commissioner shall make his  
964 assessment of tax due by mail or by personal delivery of the

965 assessment to the taxpayer, which assessment shall constitute  
966 notice and demand for payment. The taxpayer shall be given a  
967 period of thirty (30) days from the date of the notice in which to  
968 pay the tax due, including penalty and interest as hereinafter  
969 provided, and if the sum is not paid within the period of thirty  
970 (30) days, the commissioner shall proceed to collect it under the  
971 provisions of Sections 27-7-55 through 27-7-67 of this article;  
972 provided that within the period of thirty (30) days the taxpayer  
973 may appeal to the board of review as provided by law.

974 (2) If no return is made by a taxpayer required by this  
975 chapter to make a return, the commissioner shall determine the  
976 taxpayer's liability from the best information available, which  
977 determination shall be prima facie correct for the purpose of this  
978 article, and the commissioner shall forthwith make an assessment  
979 of the tax so determined to be due by mail or by personal delivery  
980 of the assessment to the taxpayer, which assessment shall  
981 constitute notice and demand for payment. The taxpayer shall be  
982 given a period of thirty (30) days from the date of the notice in  
983 which to pay the tax due, including penalty and interest as  
984 hereinafter provided, and if the sum is not paid within the period  
985 of thirty (30) days, the commissioner shall proceed to collect it  
986 under the provisions of Sections 27-7-55 through 27-7-67 of this  
987 article; provided that within said period of thirty (30) days the  
988 taxpayer may appeal to the board of review as provided by law.

989 (3) Interest at the rate of one percent (1%) per month from  
990 the due date of the return may be added or assessed in addition to  
991 the tax due as \* \* \* provided in subsections (1) and (2) of this  
992 section.

993 (4) In case of failure to file a return as required by this  
994 chapter, unless it can be shown that the failure is due to  
995 reasonable cause and not due to willful neglect, there may be  
996 added to the amount required to be shown as tax on the return a  
997 penalty of five percent (5%) of the amount of the tax if the

998 failure is for not more than one (1) month, with an additional  
999 five percent (5%) for each additional month or fraction thereof  
1000 during which the failure continues, not to exceed twenty-five  
1001 percent (25%) in the aggregate. The failure to file a return  
1002 penalty shall not be less than One Hundred Dollars (\$100.00).

1003 (5) In case of failure to pay the amount shown as tax on any  
1004 return specified in subsections (1) and (2) of this section on or  
1005 before the date prescribed for payment of the tax, determined with  
1006 regard to any extension of time for payment, unless it is shown  
1007 that the failure is due to reasonable cause and not due to willful  
1008 neglect, there may be added to the amount shown as tax on the  
1009 return one-half of one percent (1/2 of 1%) of the amount of the  
1010 tax if the failure is for not more than one (1) month, with an  
1011 additional one-half of one percent (1/2 of 1%) for each additional  
1012 month or fraction thereof during which the failure continues, not  
1013 to exceed twenty-five percent (25%) in the aggregate.

1014 **SECTION 14.** Section 27-7-55, Mississippi Code of 1972, is  
1015 amended as follows:

1016 27-7-55. If any taxpayer, liable for the payment of income  
1017 taxes, penalties or interest, fails or refuses to pay them after  
1018 receiving the notice and demands as provided in Sections 27-7-49,  
1019 27-7-51 and 27-7-53, and if the taxpayer has not filed a timely  
1020 appeal to the board of review as provided by law, the commissioner  
1021 shall file a notice of tax lien for the income taxes, penalties  
1022 and interest with the circuit clerk of the county in which the  
1023 taxpayer resides or owns property, which shall be enrolled on the  
1024 judgment roll. Immediately upon receipt of the notice of tax lien  
1025 for income taxes, penalties and interest, the circuit clerk shall  
1026 enter upon the judgment roll, in the appropriate columns, the name  
1027 of the taxpayer as judgment debtor, the name of the commissioner  
1028 or State Tax Commission as judgment creditor, the amount of the  
1029 taxes, penalties and interest, and the date and time of  
1030 enrollment. The judgment shall be valid as against mortgagees,

1031 pledgees, entrusters, purchasers, judgment creditors, and other  
1032 persons from the time of filing with the clerk. The amount of the  
1033 judgment shall be a debt due the State of Mississippi and remain a  
1034 lien upon all property and rights to property belonging to the  
1035 taxpayer, both real and personal, including choses in action, with  
1036 the same force and like effect as any enrolled judgment of a court  
1037 of record, and shall continue until satisfied; \* \* \* however, the  
1038 judgment shall not be a lien upon the property of the taxpayer for  
1039 a longer period than seven (7) years from the date of the filing  
1040 of the notice of tax lien for income taxes, penalties and interest  
1041 unless an action is brought on the lien before the expiration of  
1042 such time or unless the commissioner refiles the notice of tax  
1043 lien before the expiration of such time. The judgment shall be a  
1044 lien upon the property of the taxpayer for a period of seven (7)  
1045 years from the date of refileing such notice of tax lien unless an  
1046 action is brought on the lien before the expiration of such time  
1047 or unless the commissioner refiles such notice of tax lien before  
1048 the expiration of such time. There shall be no limit upon the  
1049 number of times that the commissioner may refile notices of tax  
1050 liens. The judgment shall serve as authority for the issuance of  
1051 writs of execution, writs of attachment, writs of garnishment or  
1052 other remedial writs. The commissioner may issue warrants for  
1053 collection of income taxes from such judgments in lieu of the  
1054 issuance of any remedial writ by the circuit clerk.

1055       Upon failure to pay the taxes imposed under this article by  
1056 any taxpayer who has executed any bond, the commissioner shall  
1057 give notice of the failure to the sureties of the bond and demand  
1058 payment of the tax, penalties and interest within ten (10) days.  
1059 If the sureties of the taxpayer's bond shall fail or refuse to pay  
1060 the penal sum demanded within the ten (10) days allowed, the  
1061 commissioner shall file a notice of tax lien with the circuit  
1062 clerk of the county in which the sureties reside or own property,  
1063 which shall be enrolled upon the judgment roll, and the



1064 commissioner may proceed to collect from the sureties as in this  
1065 section provided in this section for collecting from any judgment  
1066 debtor.

1067         The commissioner is hereby authorized to pay the clerk's fee  
1068 for enrolling certificates of indebtedness and any court costs  
1069 that may be adjudged against the commission or commissioner out of  
1070 funds appropriated by the Legislature to defray expenses of the  
1071 State Tax Commission.

1072         **SECTION 15.** Section 27-7-79, Mississippi Code of 1972, is  
1073 amended as follows:

1074         27-7-79. (1) The commissioner shall have exclusive  
1075 jurisdiction and be charged with the administration and  
1076 enforcement of the provisions of this article, except as otherwise  
1077 provided.

1078         (2) The commissioner, for the purpose of ascertaining the  
1079 correctness of any return, or for the purpose of making a return  
1080 where none has been made, is hereby authorized, by any agent  
1081 designated by the commissioner for that purpose, to examine any  
1082 books, papers, records or memoranda, bearing upon the matter  
1083 required to be included in the return, and may require the  
1084 attendance of persons rendering a return or of any officer or  
1085 employee of such person, or of any person having knowledge in the  
1086 premises, and may take his testimony with reference to the matter  
1087 required by law to be included in the return, with power to  
1088 administer oaths to such person or persons.

1089         \* \* \*

1090         (3) If any person summoned to appear under this article to  
1091 testify, or produce books, papers or other data, shall refuse to  
1092 do so, the chancery court for the district in which the person  
1093 resides shall have jurisdiction by appropriate process to compel  
1094 such attendance, testimony or production of books, papers or other  
1095 data.

1096       (4) The commissioner, with the approval of the Governor, may  
1097 appoint and remove such officers, agents, deputies, clerks and  
1098 employees as he may deem necessary, such persons to have such  
1099 duties and powers as the commissioner may, from time to time,  
1100 prescribe. The salaries of all officers, agents and employees  
1101 employed by the commissioner shall be such as he may prescribe,  
1102 with the approval of the Governor, not to exceed such amounts as  
1103 may be appropriated by the Legislature, and the members of the  
1104 commission and such officers, agents and employees shall be  
1105 allowed such reasonable and necessary traveling and other expenses  
1106 as may be incurred in the performance of their duties, not to  
1107 exceed the amount appropriated therefor by the Legislature.

1108       (5) The commissioner shall designate certain special agents  
1109 appointed under this section and evidenced by a written  
1110 certificate of appointment under the seal of the commission, of  
1111 which judicial notice shall be taken by all courts of this state.  
1112 Such agents, when in possession of a warrant issued under  
1113 authority of this article, shall have all the powers and duties of  
1114 the sheriff in enforcing the provisions of the article relating to  
1115 the warrant thus issued, and in making arrests of persons  
1116 obstructing or seeking to obstruct the execution of the warrant,  
1117 or in serving any writ, notice or order connected with the  
1118 enrolled judgment for which the warrant is issued by whatever  
1119 officer or authority of court issued.

1120       (6) The commissioner may require such of the officers,  
1121 agents, and employees, as he may designate, to give bond for the  
1122 faithful performance of their duties, in such form and with such  
1123 securities as he may determine, and all premiums on such bonds  
1124 shall be paid by the commissioner out of the monies appropriated  
1125 for the purposes of this article.

1126       (7) All officers empowered by law to administer oaths and  
1127 the members of the commission, and such officers as it may  
1128 designate, shall have power to administer an oath to any person or

1129 to take the acknowledgment of any person in respect to any return  
1130 or report required by this article or the rules and regulations of  
1131 the commissioner.

1132       (8) All agents of the commissioner shall have, for  
1133 identification purposes, proper credentials signed by the chairman  
1134 of the commission.

1135       (9) The commissioner shall prepare and publish annually  
1136 statistics reasonably available with respect to the operation of  
1137 this law, including classification of taxpayers and of the income,  
1138 the amounts allowed as deductions, exemptions and credits, and  
1139 also a statement of the cost of administering this article and any  
1140 other facts deemed pertinent and valuable.

1141       **SECTION 16.** Section 27-7-315, Mississippi Code of 1972, is  
1142 amended as follows:

1143       27-7-315. \* \* \*

1144       If any overpayment of tax as reflected on a return or amended  
1145 return filed, and verified by the commissioner or determined to be  
1146 due by the commissioner or commission when no overpayment is shown  
1147 on a return or amended return, is not refunded within ninety (90)  
1148 days after the prescribed due date of the return, the date the  
1149 return is filed, or the date the commissioner or commission  
1150 determines a refund as being due when no overpayment is shown on a  
1151 return or amended return, whichever is later, interest at the rate  
1152 of one percent (1%) per month shall be allowed on the overpayment  
1153 computed for the period after expiration of the ninety-day period  
1154 provided in this section to the date of payment.

1155       **SECTION 17.** Section 27-7-317, Mississippi Code of 1972, is  
1156 amended as follows:

1157       27-7-317. (1) Any employer who makes an overpayment of the  
1158 tax required to be remitted to the commissioner by Section  
1159 27-7-309 may file application with the commissioner, on a form  
1160 prescribed by the commissioner, to have the amount of the  
1161 overpayment refunded to him or to have the amount credited against

1162 the payment which he is required to make for a subsequent  
1163 quarterly period, but the refund or credit shall be allowed only  
1164 to the extent that the amount of the overpayment was not withheld  
1165 under Section 27-7-305 by the employer.

1166 (2) If the commissioner shall determine that the employer is  
1167 not entitled to the refund or credit as applied for, he shall so  
1168 notify the employer of the denial of the refund claim.

1169 (3) Unless written application for refund or credit is  
1170 received by the commissioner from the employer within three (3)  
1171 years from the date the overpayment was made, no refund or credit  
1172 shall be allowed.

1173 **SECTION 18.** Section 27-9-49, Mississippi Code of 1972, is  
1174 amended as follows:

1175 27-9-49. If, upon examination of any return made under this  
1176 chapter, it appears that an amount of estate tax, interest or  
1177 penalties has been paid in excess of that properly due, then the  
1178 amount in excess shall be immediately refunded to the executor at  
1179 such time as the commissioner has completed his investigation and  
1180 has determined the correct estate tax liability of the estate.

1181 If the liability of an estate for estate taxes is contested  
1182 with the federal government and, as a result of that contest, the  
1183 commissioner determines that the Mississippi estate tax, interest  
1184 or penalties have been overpaid, then the overpayment shall be  
1185 promptly refunded to the executor upon receipt of the federal  
1186 closing letter or the decision of the tax court in lieu of the  
1187 federal closing letter.

1188 A refund of estate tax, interest or penalties made pursuant  
1189 to this chapter shall bear interest at the rate of one-half of one  
1190 percent (1/2 of 1%) per month, or major fraction thereof, for the  
1191 period which is the later of the due date of the estate tax return  
1192 inclusive of all approved extensions, or the final payment of the  
1193 estate tax, interest or penalty and continuing until the date the

1194 commission has completed its investigation and has determined that  
1195 a refund is due.

1196 If any claim for overpayment of estate tax, interest or  
1197 penalty is denied, the executor may appeal such decision to the  
1198 board of review as provided by law.

1199 **SECTION 19.** Section 27-13-23, Mississippi Code of 1972, is  
1200 amended as follows:

1201 27-13-23. (1) If a return is timely filed by the taxpayer  
1202 but the tax is not paid, the commissioner shall make his  
1203 assessment of tax due by mail or by personal delivery of the  
1204 assessment to the taxpayer, which assessment shall constitute  
1205 notice and demand for payment. The taxpayer shall be given a  
1206 period of thirty (30) days from the date of the notice in which to  
1207 pay the tax due, including penalty and interest as \* \* \* provided  
1208 in this section, and if the sum is not paid within the thirty-day  
1209 period, the commissioner shall proceed to collect it under the  
1210 provisions of Sections 27-13-29 through 27-13-41 of this chapter;  
1211 provided that within said thirty-day period the taxpayer may  
1212 appeal to the board of review as provided by law.

1213 (2) If no return is made by a taxpayer required by this  
1214 chapter to make a return, the commissioner shall determine the  
1215 taxpayer's liability from the best information available, which  
1216 determination shall be prima facie correct for the purpose of this  
1217 chapter, and the commissioner shall forthwith make an assessment  
1218 of the tax so determined to be due by mail or by personal delivery  
1219 of the assessment to the taxpayer, which assessment shall  
1220 constitute notice and demand for payment. The taxpayer shall be  
1221 given a period of thirty (30) days from the date of the notice in  
1222 which to pay the tax due, including penalty and interest as \* \* \*  
1223 provided in this section, and if the sum is not paid within the  
1224 thirty-day period, the commissioner shall proceed to collect it  
1225 under the provisions of Sections 27-13-29 through 27-13-41 of this

1226 chapter; provided that within the thirty-day period the taxpayer  
1227 may appeal to the board of review as provided by law.

1228 (3) Interest at the rate of one percent (1%) per month from  
1229 the due date of the return shall be added or assessed in addition  
1230 to the tax due as \* \* \* provided in subsections (1) and (2) of  
1231 this section.

1232 (4) In case of failure to file a return as required by this  
1233 chapter, unless it can be shown that the failure is due to  
1234 reasonable cause and not due to willful neglect, there shall be  
1235 added to the amount required to be shown as tax on the return a  
1236 penalty of five percent (5%) of the amount of the tax if the  
1237 failure is for not more than one (1) month, with an additional  
1238 five percent (5%) for each additional month or fraction thereof  
1239 during which the failure continues, not to exceed twenty-five  
1240 percent (25%) in the aggregate.

1241 (5) In case of failure to pay the amount shown as tax on any  
1242 return specified in subsections (1) and (2) of this section on or  
1243 before the date prescribed for payment of the tax, determined with  
1244 regard to any extension of time for payment, unless it is shown  
1245 that the failure is due to reasonable cause and not due to willful  
1246 neglect, there shall be added to the amount shown as tax on the  
1247 return one-half of one percent (1/2 of 1%) of the amount of the  
1248 tax if the failure is for not more than one (1) month, with an  
1249 additional one-half of one percent (1/2 of 1%) for each additional  
1250 month or fraction thereof during which the failure continues, not  
1251 to exceed twenty-five percent (25%) in the aggregate.

1252 **SECTION 20.** Section 27-13-25, Mississippi Code of 1972, is  
1253 amended as follows:

1254 27-13-25. (1) If, upon examination of a return made under  
1255 the provisions of this chapter, it appears that the correct amount  
1256 of tax is greater or less than that shown in the return, the tax  
1257 shall be recomputed. Any overpayment of tax so determined shall  
1258 be credited or refunded to the taxpayer. If the correct amount of

1259 tax is greater than that shown in the return of the taxpayer, the  
1260 commissioner shall make his assessment of additional tax due by  
1261 certified mail or by personal delivery of the assessment to the  
1262 taxpayer, which assessment shall constitute notice and demand for  
1263 payment. The taxpayer shall be given a period of thirty (30) days  
1264 after receipt of notice in which to pay the additional tax due,  
1265 including penalty and interest as \* \* \* provided in this section,  
1266 and if the sum is not paid within the thirty-day period, the  
1267 commissioner shall proceed to collect it under the provisions of  
1268 Sections 27-13-29 through 27-13-41, provided that within the  
1269 thirty-day period the taxpayer may appeal to the board of review  
1270 as provided by law.

1271 (2) In the case of an overpayment of tax, interest shall be  
1272 computed under the provisions of Section 27-7-315. In the case of  
1273 an underpayment of tax, interest at the rate of one percent (1%)  
1274 per month from the due date of the return shall be added or  
1275 assessed in addition to the additional tax due as \* \* \* provided  
1276 in subsection (1) of this section.

1277 (3) In case of failure to pay any additional taxes as  
1278 assessed under this section, unless it is shown that the failure  
1279 is due to reasonable cause and not due to willful neglect, there  
1280 shall be added to the additional amount assessed a penalty of  
1281 one-half of one percent (1/2 of 1%) of the amount of the  
1282 additional tax if the failure is for not more than one (1) month,  
1283 with an additional one-half of one percent (1/2 of 1%) for each  
1284 additional month or fraction thereof during which the failure  
1285 continues, not to exceed twenty-five percent (25%) in the  
1286 aggregate.

1287 **SECTION 21.** Section 27-13-29, Mississippi Code of 1972, is  
1288 amended as follows:

1289 27-13-29. If any taxpayer, liable for the payment of  
1290 franchise taxes, penalties or interest, fails or refuses to pay  
1291 them after receiving the notice and demands as provided in Section

1292 27-13-23 or 27-13-25, and if such taxpayer has not filed a timely  
1293 appeal to the board of review as provided by law, the commissioner  
1294 shall file a notice of tax lien for the franchise taxes,  
1295 penalties, and interest with the circuit clerk of the county in  
1296 which the taxpayer resides or owns property, which, shall be  
1297 enrolled on the judgment roll. Immediately upon receipt of the  
1298 notice of tax lien for franchise taxes, penalties and interest,  
1299 the circuit clerk shall enter upon the judgment roll, in the  
1300 appropriate columns, the name of the taxpayer as judgment debtor,  
1301 the name of the commissioner or State Tax Commission as judgment  
1302 creditor, the amount of the taxes, penalties and interest, and the  
1303 date and time of enrollment. The judgment shall be valid as  
1304 against mortgagees, pledgees, entrusters, purchasers, judgment  
1305 creditors, and other persons from the time of filing with the  
1306 clerk. The amount of the judgment shall be a debt due the State  
1307 of Mississippi and remain a lien upon all property and rights to  
1308 property belonging to the taxpayer, both real and personal,  
1309 including choses in action, with the same force and like effect as  
1310 any enrolled judgment of a court of record, and shall continue  
1311 until satisfied. Such judgment shall serve as authority for the  
1312 issuance of writs of execution, writs of attachments, writs of  
1313 garnishment or other remedial writs. The commissioner may issue  
1314 warrants for collection of franchise taxes from such judgments in  
1315 lieu of the issuance of any remedial writ by the circuit clerk.

1316       Upon failure to pay the taxes imposed under this chapter by  
1317 any taxpayer who has executed any bond, the commissioner shall  
1318 give notice of the failure to the sureties of such bond and demand  
1319 payment of the tax, penalties and interest within ten (10) days.  
1320 If the sureties of the taxpayer's bond shall fail or refuse to pay  
1321 the penal sum demanded within the ten (10) days allowed, the  
1322 commissioner shall file a notice of tax lien with the circuit  
1323 clerk of the county in which the sureties reside or own property,  
1324 which shall be enrolled upon the judgment roll, and the



1325 commissioner may proceed to collect from the sureties as \* \* \*  
1326 provided in this section for collecting from any judgment debtor.

1327 The commissioner is hereby authorized to pay the clerk's fee  
1328 for enrolling certificates of indebtedness and any court costs  
1329 that may be adjudged against the commission or commissioner out of  
1330 funds appropriated by the Legislature to defray expenses of the  
1331 State Tax Commission.

1332 **SECTION 22.** Section 27-13-65, Mississippi Code of 1972, is  
1333 amended as follows:

1334 27-13-65. (1) **Jurisdiction.** The commissioner shall have  
1335 exclusive jurisdiction and be charged with the administration and  
1336 enforcement of the provisions of this chapter, except as otherwise  
1337 provided.

1338 (2) **Examine books.** The commissioner, for the purpose of  
1339 ascertaining the correctness of any return, or for the purpose of  
1340 making a return where none has been made, is hereby authorized, by  
1341 any agent designated by the commissioner, for that purpose, to  
1342 examine any books, papers, records or memoranda, bearing upon the  
1343 matter required to be included in the return, and may require the  
1344 attendance of persons rendering a return or of any officer or  
1345 employee of such person, or of any person having knowledge in the  
1346 premises, and may take his testimony with reference to the matter  
1347 required by law to be included in such return, with power to  
1348 administer oaths to such person or persons.

1349 (3) **Summons.** If any person summoned to appear under this  
1350 chapter to testify, or produce books, papers or other data, shall  
1351 refuse to do so, the chancery court for the district in which such  
1352 person resides shall have jurisdiction by appropriate process to  
1353 compel \* \* \* attendance, testimony or production of books, papers  
1354 or other data.

1355 (4) **Employees.** The commissioner, with the approval of the  
1356 Governor, may appoint and remove such officers, agents, deputies,  
1357 clerks and employees as he may deem necessary, such persons to

1358 have such duties and powers as the commissioner may, from time to  
1359 time, prescribe. The salaries of all officers, agents and  
1360 employees employed by the commissioner shall be such as he may  
1361 prescribe, with the approval of the Governor, not to exceed such  
1362 amounts as may be appropriated by the Legislature, and the members  
1363 of the commission and such officers, agents and employees shall be  
1364 allowed such reasonable and necessary traveling and other expenses  
1365 as may be incurred in the performance of their duties not to  
1366 exceed the amount appropriated therefor by the Legislature.

1367       (5) **Special agents.** The commissioner shall designate  
1368 certain special agents appointed under this section and evidenced  
1369 by a written certificate of appointment under the seal of the  
1370 commission, of which judicial notice shall be taken by all courts  
1371 of this state. Such agents, when in possession of a warrant  
1372 issued under authority of this chapter, shall have all the powers  
1373 and duties of the sheriff in enforcing the provisions of the  
1374 chapter relating to the warrant thus issued, and in making arrests  
1375 of persons obstructing or seeking to obstruct the execution of  
1376 such warrant, or in serving any writ, notice or order connected  
1377 with the enrolled judgment for which the warrant is issued by  
1378 whatever officer or authority of court issued.

1379       (6) **Employees bond.** The commissioner may require such of  
1380 the officers, agents and employees, as he may designate, to give  
1381 bond for the faithful performance of their duties, in such form  
1382 and with such securities as he may determine, and all premiums on  
1383 such bonds shall be paid by the commissioner out of the monies  
1384 appropriated for the purposes of this chapter.

1385       (7) **Administer oath.** All officers empowered by law to  
1386 administer oaths and the members of the commission, and such  
1387 officers as it may designate, shall have power to administer an  
1388 oath to any person or to take the acknowledgment of any person in  
1389 respect to any return or report required by this chapter or the  
1390 rules and regulations of the commissioner.

1391           (8) **Credentials.** All agents of the commissioner shall have,  
1392 for identification purposes, proper credentials signed by the  
1393 chairman of the commission.

1394           (9) **Statistics.** The commissioner shall prepare and publish  
1395 annually statistics reasonably available with respect to the  
1396 operation of this law, as he may deem pertinent and valuable.

1397           \* \* \*

1398           **SECTION 23.** Section 27-19-48, Mississippi Code of 1972, is  
1399 amended as follows:

1400           27-19-48. (1) Owners of motor vehicles who are residents of  
1401 this state, upon complying with the motor vehicle laws relating to  
1402 registration and licensing of motor vehicles, and upon payment of  
1403 the road and bridge privilege taxes, ad valorem taxes and  
1404 registration fees as prescribed by law for private carriers of  
1405 passengers, pickup trucks and other noncommercial motor vehicles,  
1406 and upon payment of an additional fee in the amount provided in  
1407 subsection (4)(a) of this section, shall be issued a personalized  
1408 license tag of the same color as regular license tags to consist  
1409 of the name of the county and not more than seven (7) letters of  
1410 the alphabet or seven (7) numbers in lieu of the license tag  
1411 numbering system prescribed by law. The purchaser of the  
1412 personalized license tag may choose the combination of such  
1413 letters or numbers, but no two (2) motor vehicles shall have the  
1414 same combination of letters or numbers. In the event that the  
1415 same combination of letters has been chosen by two (2) or more  
1416 purchasers, the State Tax Commission shall assign a different  
1417 number to each such purchaser which shall appear on the license  
1418 tag following the combination of letters; \* \* \* however, this  
1419 combination shall not exceed seven (7) letters and/or numbers.  
1420 The combination of letters and/or numbers written across the  
1421 license tag shall be sufficiently large to be easily read but  
1422 shall not be less than three (3) inches in height. No combination  
1423 of letters or numbers which comprise words or expressions that are

1424 considered obscene, slandering, insulting or vulgar in ordinary  
1425 usage shall be permitted, with the Chairman of the State Tax  
1426 Commission having the responsibility of making this determination.  
1427 If, however, such license plate is issued in error or otherwise  
1428 and is determined by the chairman to be obscene, slanderous,  
1429 insulting, vulgar or offensive, the chairman shall notify the  
1430 owner that the license plate must be surrendered and that another  
1431 personalized license plate may be selected by him and issued at no  
1432 cost. Should the vehicle owner not desire another personalized  
1433 license plate, the fee for such plate shall be refunded. In the  
1434 event the owner fails to surrender the license plate after  
1435 receiving proper notification, the chairman shall issue an order  
1436 directing that the license plate be seized by agents of the State  
1437 Tax Commission or any other duly authorized law enforcement  
1438 personnel. \* \* \*

1439 (2) For the purposes of this section the terms "motor  
1440 vehicle" and "vehicle" include motorcycles.

1441 (3) Application for the personalized license tags shall be  
1442 made to the county tax collector on forms prescribed by the State  
1443 Tax Commission. The application form shall contain space for the  
1444 applicant to make five (5) different choices for the combination  
1445 of the letters and numbers in the order in which said combination  
1446 is desired by the applicant. The application and the additional  
1447 fee, less five percent (5%) thereof to be retained by the tax  
1448 collector, shall be remitted to the State Tax Commission within  
1449 seven (7) days of the date the application is made. The portion  
1450 of the additional fee retained by the tax collector shall be  
1451 deposited into the county general fund.

1452 (4) (a) Beginning with any registration year commencing on  
1453 or after November 1, 1986, any person applying for a personalized  
1454 license tag shall pay an additional fee which shall be in addition  
1455 to all other taxes and fees. The additional fee paid shall be for  
1456 a period of time to run concurrent with the vehicle's established

1457 license tag year. The additional fee of Thirty Dollars (\$30.00)  
1458 is due and payable at the time the original application is made  
1459 for a personalized tag and thereafter annually at the time of  
1460 renewal registration as long as the owner retains the personalized  
1461 tag. If the owner does not wish to retain the personalized tag,  
1462 he must surrender it to the local county tax collector. The  
1463 additional fee due at the time of renewal registration shall be  
1464 collected by the county tax collector and remitted to the State  
1465 Tax Commission on a monthly basis as prescribed by the commission.

1466 (b) The State Tax Commission shall deposit all taxes  
1467 and fees into the State Treasury on the day collected. At the end  
1468 of each month, the State Tax Commission shall certify the total  
1469 fees collected under this section to the State Treasurer who shall  
1470 distribute to the credit of the State General Fund Sixteen Dollars  
1471 and Twenty-five Cents (\$16.25) of each additional fee and the  
1472 remainder of each such additional fee shall be deposited to the  
1473 credit of the State Highway Fund to be expended solely for the  
1474 repair, maintenance, construction or reconstruction of highways.

1475 (5) A regular license tag must be properly displayed as  
1476 required by law until replaced by a personalized license tag; and  
1477 the regular license tag must be surrendered to the tax collector  
1478 upon issuance of the personalized license tag. The tax collector  
1479 shall issue up to two (2) license decals for the personalized  
1480 license tag, which will expire the same month and year as the  
1481 original license tag.

1482 (6) The applicant shall receive a refund of the fee paid for  
1483 a personalized license tag if the personalized license tag is not  
1484 issued to him because the combination of letters and numbers  
1485 requested to be placed thereon is not available for any reason.

1486 (7) In the case of loss or theft of a personalized license  
1487 tag, the owner may make application and affidavit for a  
1488 replacement license tag as provided by Section 27-19-37. The fee  
1489 for a replacement personalized license tag shall be Ten Dollars

1490 (\$10.00). The tax collector receiving such application and  
1491 affidavit shall be entitled to retain and deposit into the county  
1492 general fund five percent (5%) of the fee for such replacement  
1493 license tag and the remainder shall be distributed in the same  
1494 manner as funds from the sale of regular license tags.

1495 (8) The owner of a personalized license tag may make  
1496 application for a duplicate of such tag. The fee for such  
1497 duplicate personalized license tag shall be Ten Dollars (\$10.00).  
1498 The tax collector receiving the application shall be entitled to  
1499 retain and deposit into the county general fund five percent (5%)  
1500 of the fee for such duplicate personalized license tag and the  
1501 remainder shall be distributed in the same manner as funds from  
1502 the sale of regular license tags. A duplicate personalized  
1503 license tag may not be fastened to the rear of a vehicle and may  
1504 not be utilized as a replacement for any personalized license tag  
1505 issued pursuant to this section. Month decals and year decals  
1506 shall not be issued for duplicate personalized license tags and  
1507 month decals and year decals shall not be attached to duplicate  
1508 personalized license tags.

1509 **SECTION 24.** Section 27-19-73, Mississippi Code of 1972, is  
1510 amended as follows:

1511 27-19-73. The tax collector or the commission, as the case  
1512 may be, is authorized and empowered to refund to any individual,  
1513 firm or corporation any motor vehicle privilege license tax,  
1514 permit or tag fee which has been paid or collected through error  
1515 or otherwise when the person, individual, firm or corporation was  
1516 not liable for such tax or fee or when the individual, firm or  
1517 corporation has paid any such privilege tax or fee in excess of  
1518 the sum properly due, whether such payments were made under  
1519 protest or compulsion or not. Taxes erroneously paid within the  
1520 meaning of this section shall include, but shall not be limited  
1521 to, overpayments, double payments upon the same vehicle, payments

1522 upon vehicles not located within the State of Mississippi, and all  
1523 other erroneous or illegal payments.

1524 All claims for refunds under this section shall be made  
1525 within twelve (12) months from the date of the erroneous payment  
1526 of \* \* \* taxes or fees and the refunds, approved by the tax  
1527 collector or commission, shall be made out of any monies collected  
1528 by the tax collector or commission from the same source of  
1529 revenue. If such source of revenue no longer exists, the refund  
1530 shall come from the general fund collections. If such refund is  
1531 approved by the tax collector, he shall issue a warrant to the  
1532 claimant and deduct the proper amounts from his next settlement.  
1533 If a claim for refund is disapproved, the claimant shall be  
1534 notified of the disapproval and the reasons therefor. \* \* \*

1535 **SECTION 25.** Section 27-55-535, Mississippi Code of 1972, is  
1536 amended as follows:

1537 27-55-535. When special fuel is lost or destroyed in  
1538 quantities of seven hundred fifty (750) gallons or more through  
1539 explosion, fire, collision, storage tank wreckage, wreckage of  
1540 loading or unloading facilities, such as pumps and lines, or acts  
1541 of Providence while in storage in this state or while being  
1542 transported in this state, the owner of the special fuel shall be  
1543 entitled to tax credit or refund of the tax paid thereon.

1544 The commission shall be notified by the owner of the lost or  
1545 destroyed special fuel within five (5) days after the loss or  
1546 destruction is discovered. The commission shall make an  
1547 investigation of the facts and circumstances surrounding the loss  
1548 or destruction as may be reasonably necessary for the effective  
1549 administration of this article.

1550 The claim shall be made in the name of the owner of the lost  
1551 or destroyed special fuel and shall be signed by the owner or his  
1552 authorized agent and filed within three (3) years after the date  
1553 of loss. All \* \* \* claims must be accompanied by proof  
1554 satisfactory to the commission that the special fuel for which

1555 credit is claimed was destroyed by or through one of the means set  
1556 forth in the first paragraph of this section, and in all cases  
1557 where the special fuel alleged to have been destroyed was covered  
1558 by insurance, the commission shall not approve such claims unless  
1559 and until the insurer has acknowledged and actually paid the loss.

1560       Upon receipt of the claim the commission shall determine the  
1561 amount of refund or tax credit due the claimant and in the case of  
1562 refund the amount shall be refunded to the claimant as provided in  
1563 Section 27-55-19.

1564       If the commission determines that any refund claim shall not  
1565 be paid, it shall notify the claimant stating the reason or  
1566 reasons why the claim is disallowed.

1567       A claimant may, within thirty (30) days after receipt of  
1568 written notice of the disallowance of his claim, appeal to the  
1569 board of review as provided by law.

1570       **SECTION 26.** Section 27-57-19, Mississippi Code of 1972, is  
1571 amended as follows:

1572       27-57-19. When lubricating oil is lost or destroyed in  
1573 quantities of two hundred fifty (250) gallons or more through  
1574 explosion, fire, collision, storage tank wreckage, wreckage of  
1575 loading or unloading facilities or other acts of Providence, only  
1576 while in storage in this state or while being transported in this  
1577 state, the owner of the lubricating oil shall be entitled to a  
1578 refund of the tax paid thereon.

1579       The commission shall be notified by the owner of lubricating  
1580 oil lost or destroyed within five (5) days after the loss or  
1581 destruction is discovered. The commission shall make an  
1582 investigation of the facts and circumstances surrounding the loss  
1583 or destruction as may be reasonably necessary for the effective  
1584 administration of this section.

1585       The claim shall be made in the name of the owner of the  
1586 lubricating oil lost or destroyed, and shall be signed by the  
1587 owner or his authorized agent and filed within three (3) years



1588 after the date of the loss. All \* \* \* claims must be accompanied  
1589 by proof satisfactory to the commission that the lubricating oil  
1590 for which credit is claimed was destroyed as herein provided. In  
1591 all cases where lubricating oil alleged to have been destroyed was  
1592 covered by insurance, the commission shall not approve such claim  
1593 unless and until the insurer has acknowledged and actually paid  
1594 the loss.

1595       Upon the receipt of the claim, the commission shall determine  
1596 the amount of refund or tax credit due to the claimant and in the  
1597 case of refund the amount shall be refunded to the claimant as  
1598 provided in Section 27-55-19. The refund shall be paid from  
1599 current lubricating oil tax collections.

1600       If the commission determines that any refund claim shall not  
1601 be paid or any tax credit allowed, it shall notify the claimant at  
1602 the earliest possible date after it determines the claim cannot be  
1603 allowed stating the reason or reasons why the claim is rejected.

1604       A claimant may, within thirty (30) days after the rejection  
1605 of his claim, appeal to the board of review as provided by law.

1606       **SECTION 27.** Section 27-65-27, Mississippi Code of 1972, is  
1607 amended as follows:

1608       27-65-27. (1) Any person who engages, or who intends to  
1609 engage, in any business or activity which will subject such person  
1610 to a privilege tax imposed by this chapter, shall apply to the  
1611 commissioner for a permit to engage in and to conduct any business  
1612 or activity upon the condition that he shall pay the tax accruing  
1613 to the State of Mississippi under the provisions of this chapter,  
1614 and shall keep adequate records of such business or activity as  
1615 required by this chapter. By making an application for a permit  
1616 issued pursuant to this section, a person agrees, regardless of  
1617 his presence in this state, to:

1618       (a) Be subject to the jurisdiction of this state for  
1619 purposes of taxation;

1620 (b) Collect and remit all taxes levied under this  
1621 chapter on the type of business or activity to be conducted by the  
1622 applicant;

1623 (c) Be subject to all the provisions of this chapter.

1624 (2) Upon receipt of the permit, the applicant shall be duly  
1625 licensed under this chapter to engage in and conduct the business  
1626 or activity. The permit shall continue in force so long as the  
1627 person to whom it is issued shall continue in the same business at  
1628 the same location, unless revoked by the commissioner for cause.

1629 (3) The commissioner shall require of every person desiring  
1630 to engage in business within this state who maintains no permanent  
1631 place of business within this state, of every person desiring to  
1632 engage in the business of making sales of mobile homes, a cash  
1633 bond or an approved surety bond in an amount sufficient to cover  
1634 twice the estimated tax liability for a period of three (3)  
1635 months. \* \* \* However, \* \* \* the bond shall in no case be less  
1636 than One Hundred Dollars (\$100.00) and \* \* \* the tax may be  
1637 prepaid in lieu of filing bond if the amount is approved by the  
1638 commissioner. This bond shall be filed with the commissioner  
1639 prior to the issuance of a permit to do business and before any  
1640 such person may engage in business within this state. Failure to  
1641 comply with the provision will subject such person to the  
1642 penalties provided by this chapter.

1643 (4) The commissioner is \* \* \* authorized to deny the  
1644 application for a permit or revoke the permit of any person who  
1645 has failed or is failing to comply with any of the provisions of  
1646 this chapter. \* \* \* Revocation of such permit, or engaging or  
1647 continuing in business after such permit is revoked or engaging in  
1648 business without a permit, shall subject the person to all the  
1649 penalties imposed by this chapter.

1650 (5) Any person liable for the tax who fails to obtain a  
1651 permit from the commissioner, or who continues in business after  
1652 such permit has been revoked, or who fails to make his returns for

1653 taxation as provided, or who fails to keep adequate records and  
1654 invoices provided by this chapter, or who fails or refuses to  
1655 permit inspection of such records, or who fails to pay any taxes  
1656 due hereunder, shall forfeit his rights to do business in this  
1657 state until he complies with all the provisions of this chapter  
1658 and until he enters into a bond, with sureties, to be approved by  
1659 the commissioner, in an amount not to exceed twice the amount of  
1660 all taxes estimated to become due under this chapter by the person  
1661 for any period of three (3) months, conditioned to comply with the  
1662 provisions of this chapter, and pay all taxes legally due by him.

1663 (6) If any person is engaged in or continuing in this state  
1664 in any business or activity without obtaining a permit, or after  
1665 the permit has been revoked, or without filing a required bond, or  
1666 without keeping and allowing inspection of all records required by  
1667 this chapter, or without making a return, or returns, and without  
1668 paying all taxes due by him hereunder, it shall be the duty of the  
1669 commissioner to proceed by injunction to prevent the continuance  
1670 of the business. Any temporary injunction enjoining the  
1671 continuance of the business shall be granted without notice by a  
1672 judge or chancellor now authorized to grant injunctions.

1673 **SECTION 28.** Section 27-65-57, Mississippi Code of 1972, is  
1674 amended as follows:

1675 27-65-57. If any person liable for the payment of sales  
1676 taxes, damages or interest fails or refuses to pay them after  
1677 receiving the notice and demand as provided in Sections 27-65-35  
1678 and 27-65-37, and if such person has not filed a timely appeal to  
1679 the board of review as provided by law, the commissioner may file  
1680 a notice of a tax lien for the sales taxes, damages and interest  
1681 with the circuit clerk of the county in which the taxpayer resides  
1682 or owns property which shall be enrolled as a judgment on the  
1683 judgment roll.

1684 Immediately upon receipt of the notice of the tax lien for  
1685 sales taxes, damages and interest, the circuit clerk shall enter

1686 the notice of a tax lien as a judgment upon the judgment roll and  
1687 show in the appropriate columns the name of the taxpayer as  
1688 judgment debtor, the name of the commissioner or State Tax  
1689 Commission as judgment creditor, the amount of the taxes, damages  
1690 and interest, and the date and time of enrollment. The judgment  
1691 shall be valid as against mortgagees, pledgees, entrusters,  
1692 purchasers, judgment creditors, and other persons from the time of  
1693 filing with the clerk. The amount of the judgment shall be a debt  
1694 due the State of Mississippi and remain a lien upon all property  
1695 and rights to property belonging to the taxpayer, both real and  
1696 personal, including choses in action, with the same force and like  
1697 effect as any enrolled judgment of a court of record, and shall  
1698 continue until satisfied. The judgment shall be the equivalent of  
1699 any enrolled judgment of a court of record and shall serve as  
1700 authority for the issuance of writs of execution, writs of  
1701 attachment, writs of garnishment or other remedial writs. The  
1702 commissioner may issue warrants for collection of sales taxes from  
1703 such judgments, in lieu of the issuance of any remedial writ by  
1704 the circuit clerk, as provided in Sections 27-65-59 and 27-65-61  
1705 hereof; \* \* \* however, \* \* \* such judgment shall not be a lien  
1706 upon the property of the taxpayer for a longer period than seven  
1707 (7) years from the date of the filing of the notice of tax lien  
1708 for sales taxes, damages and interest unless action be brought  
1709 thereon before the expiration of such time or unless the  
1710 commissioner refiles the notice of tax lien before the expiration  
1711 of such time. The judgment shall be a lien upon the property of  
1712 the taxpayer for a period of seven (7) years from the date of  
1713 refiling the notice of tax lien unless action be brought thereon  
1714 before the expiration of such time or unless the commissioner  
1715 refiles the notice of tax lien before the expiration of such time.  
1716 There shall be no limit upon the number of times that the  
1717 commissioner may refile notices of tax liens.

1718           Upon failure to pay the taxes imposed under this chapter by  
1719 any taxpayer who has executed any bond under provisions of this  
1720 chapter, the commissioner shall give notice of the failure to the  
1721 sureties of the bond and demand payment of the tax, damages and  
1722 interest within ten (10) days. If the sureties on the taxpayer's  
1723 bond shall fail or refuse to pay the penal sum demanded within the  
1724 ten (10) days allowed, the commissioner shall file a notice of tax  
1725 lien with the circuit clerk of the county in which the sureties  
1726 reside or own property which shall be enrolled upon the judgment  
1727 roll, and the commissioner may proceed to collect from the  
1728 sureties as hereinafter provided for collecting from any judgment  
1729 debtor.

1730           The commissioner is hereby authorized to pay the clerk's fee  
1731 for enrolling the notice of tax lien out of funds appropriated by  
1732 the Legislature to defray expenses of the State Tax Commission.

1733           **SECTION 29.** Section 27-69-9, Mississippi Code of 1972, is  
1734 amended as follows:

1735           27-69-9. In addition to the penalties imposed in this  
1736 chapter, after the second offense for any violation, the  
1737 commissioner may revoke any permit which may have been issued to  
1738 any person, or persons, violating any provisions of this chapter,  
1739 or any rules or regulations promulgated by the commissioner under  
1740 authority of this chapter \* \* \*.

1741           The commissioner, in the event a permit is revoked, is  
1742 required to notify by letter, all manufacturers, wholesalers and  
1743 distributors having a permit required by this chapter, that the  
1744 permit has been revoked, and such manufacturer, wholesaler and  
1745 distributor is henceforth prohibited from selling taxable tobacco  
1746 to such dealer or retailer.

1747           **SECTION 30.** Section 27-73-1, Mississippi Code of 1972, is  
1748 amended as follows:

1749           27-73-1. (1) If any person, firm or corporation has paid,  
1750 or shall hereafter pay to the Auditor of Public Accounts \* \* \* or

1751 the Commissioner of Insurance, through error or otherwise, whether  
1752 paid under protest or not, any ad valorem, privilege or excise tax  
1753 for which the person, firm or corporation was not liable, or if  
1754 any such taxpayer has paid any tax in excess of the sum properly  
1755 due and such erroneous payment or overpayment has been paid into  
1756 the proper treasury, the taxpayer shall be entitled to a refund of  
1757 the taxes so erroneously paid. Taxes erroneously paid within the  
1758 meaning of this section shall include double payment, or  
1759 overpayment, or payment on state, United States, vacant and exempt  
1760 land, and the purchase price paid for the redemption of lands  
1761 erroneously sold for taxes.

1762         Claims for refund under the provisions of this section shall  
1763 be filed with the Auditor of Public Accounts and shall be  
1764 supported by proper documents showing the overpayment or erroneous  
1765 payment for which claim is made. The \* \* \* auditor is hereby  
1766 authorized and required to make a careful investigation and audit  
1767 of all such claims and if he shall find that the taxes or monies  
1768 covered by the \* \* \* claim have been erroneously paid into the  
1769 treasury of the state, county, drainage or levee districts, he  
1770 shall distribute the claim against each separate fund in  
1771 proportion to the amount paid over to such fund in each case, and  
1772 submit the audited claim with the voucher and evidence upon which  
1773 the claim is based, to the Attorney General for his approval. The  
1774 Attorney General shall have plenary power to require the claimant  
1775 or the officer who collected the tax to furnish any \* \* \*  
1776 additional documents or information as may in his opinion be  
1777 necessary or proper to enable him to determine the merits of the  
1778 claim.

1779         If the Attorney General shall be of the opinion that the  
1780 claim is in proper form and complies with the requirements of this  
1781 section, he shall approve the claim and return it to the Auditor  
1782 of Public Accounts, who shall thereupon file in his office the  
1783 audited claim, together with the Attorney General's approval and

1784 all other documents relating to the claim, as a voucher, and issue  
1785 his warrant on the State Treasurer in favor of the claimant for  
1786 the amount of purchase money or taxes erroneously paid into the  
1787 State Treasury. The auditor shall then certify to the clerk of  
1788 the board of supervisors, the secretary of the drainage district  
1789 board, or the secretary of the levee board, as the case may be,  
1790 the amount, if any, found to be due to the claimant by the county,  
1791 drainage district or levee district. Upon receipt of the  
1792 certificate, the board of supervisors, or the commissioners of the  
1793 drainage district or of the levee district, shall cause a warrant  
1794 to be issued on the treasurer of the county or drainage or levee  
1795 district, as the case may be, in favor of the claimant for the  
1796 amount erroneously paid into their respective treasuries.

1797         If the Attorney General shall disapprove the claim, he shall  
1798 return it to the Auditor of Public Accounts accompanied by his  
1799 opinion which shall show the reason for his disapproval, whereupon  
1800 the auditor shall promptly notify the claimant of the disapproval.  
1801 A claimant taxpayer being aggrieved at the disapproval may, within  
1802 six (6) months from the date thereof, file in the chancery court  
1803 his petition for appeal and review. All \* \* \* petitions for  
1804 appeal and review shall be filed in the chancery court of the  
1805 county in which the money for which refund is claimed was  
1806 originally paid, and shall be accompanied by a bond in the sum of  
1807 Five Hundred Dollars (\$500.00) conditioned to pay all costs which  
1808 may accrue in the case, which bond shall be approved by the clerk  
1809 of the \* \* \* court. Upon the approval of the bond, the chancery  
1810 clerk shall give the Attorney General and the Auditor of Public  
1811 Accounts notice, as required by law, of the filing of the  
1812 petition. It shall be the duty of the \* \* \* auditor to promptly  
1813 transmit to the court in which the appeal is pending a certified  
1814 copy of the entire record of the claim as shown by the files in  
1815 his office, which record shall be docketed by the clerk in the  
1816 cause, and the controversy shall be tried by the court on such

1817 record. It shall be the duty of the Attorney General to defend on  
1818 behalf of the state, and he may request the district attorney,  
1819 county attorney or attorney for the drainage or levee district, as  
1820 the case may be, to defend on behalf of the county, drainage or  
1821 levee district. If the claimant taxpayer shall prevail, judgment  
1822 shall be entered requiring the payment of the claim in like manner  
1823 as if it had been duly approved by the Attorney General. If,  
1824 however, the action of the Attorney General in disapproving the  
1825 claim shall be affirmed by the court, judgment shall be entered  
1826 against the appealing taxpayer for the costs of the proceedings.

1827       Nothing in this section shall be so construed as to authorize  
1828 the recovery or repayment of any tax heretofore levied and  
1829 collected by any special road district, drainage district, or  
1830 separate school district, on account of, or upon the ground that  
1831 the law authorizing such tax was unconstitutional, whether the  
1832 unconstitutionality of such tax be based upon the creation or mode  
1833 of operation of any special road district, drainage district or  
1834 separate school district. Provided further, that nothing in this  
1835 section shall be construed as authorizing the refunding of state  
1836 taxes paid into the State Treasury through error, or otherwise, or  
1837 satisfying a judgment or decree against the state except through  
1838 an appropriation therefor by the Legislature.

1839       (2) This section shall not be construed as repealing or  
1840 modifying Section 27-73-7, or any other law providing for the  
1841 application for or the certification of a claim for refund, but  
1842 shall be taken and construed as an additional and supplemental  
1843 method of refunding taxes erroneously paid.

1844       **SECTION 31.** Section 27-73-5, Mississippi Code of 1972, is  
1845 amended as follows:

1846       27-73-5. All suits by any taxpayer for the recovery of any  
1847 privilege \* \* \* or other excise tax, except taxes paid to the  
1848 State Tax Commission, and all applications or proceedings for any  
1849 refund or credit of such taxes shall be filed or made within three



1850 (3) years next after the return was filed, or from the date the  
1851 assessment of the tax was made, or from the date the tax was paid,  
1852 as the case may be, whichever is the earlier, and no recovery of  
1853 taxes under any such suit shall be had and no refund of taxes  
1854 shall be made unless the suit or application was filed within the  
1855 period of limitation.

1856 \* \* \* However, as to income taxes the three-year statute of  
1857 limitations shall be extended to six (6) years in cases where the  
1858 reported net income of a taxpayer has been reduced by the bureau  
1859 of internal revenue for any taxable period.

1860 **SECTION 32.** Section 67-3-29, Mississippi Code of 1972, is  
1861 amended as follows:

1862 67-3-29. (1) The commissioner, or a hearing officer or the  
1863 board of review, as designated by the commissioner, after a show  
1864 cause hearing, shall revoke or suspend any permit granted by  
1865 authority of this chapter to any person who shall violate any of  
1866 the provisions of this chapter or the revenue laws of this state  
1867 relating to engaging in transporting, storing, selling,  
1868 distributing, possessing, receiving or manufacturing of wines or  
1869 beers, or any person who shall hereafter be convicted of the  
1870 unlawful sale of intoxicating liquor, or any person who shall  
1871 allow or permit any form of illegal gambling or immorality on the  
1872 premises described in such permit. The commissioner shall not  
1873 revoke or suspend a permit of a retailer for the sale of light  
1874 wine or beer to a person under the age of twenty-one (21) years  
1875 until there has been a conviction of the permit holder or an  
1876 employee of the permit holder for such violation.

1877 (2) If any person exercising any privilege taxable under the  
1878 provisions of Chapter 71 of Title 27, Mississippi Code of 1972,  
1879 shall willfully neglect or refuse to comply with the provisions of  
1880 such chapter, or any rules or regulations promulgated by the  
1881 commissioner under authority of such chapter, or the provisions of  
1882 this chapter, including maintaining the qualifications of an

1883 applicant under Section 67-3-19, during the permit period, the  
1884 commissioner shall be authorized to revoke or suspend the permit  
1885 theretofore issued to the person \* \* \*. Any person whose permit  
1886 shall have been revoked by the commissioner shall be thereafter  
1887 prohibited from exercising any privilege under the provisions of  
1888 Chapter 71 of Title 27, Mississippi Code of 1972, for a period of  
1889 two (2) years from the date of the revocation. The commissioner  
1890 may, however, for good cause shown, grant a new permit upon such  
1891 conditions as the commissioner may prescribe. Any person whose  
1892 permit shall have been suspended by the commissioner shall be  
1893 prohibited from exercising any privilege under the provisions of  
1894 Chapter 71 of Title 27, Mississippi Code of 1972, during the  
1895 period of the suspension. Failure of the person to comply with  
1896 the terms of the suspension shall be cause for revocation of his  
1897 permit, in addition to the other penalties provided by law.

1898 (3) In addition to the reasons specified in this section and  
1899 other provisions of this chapter, the commissioner shall be  
1900 authorized to suspend the permit of any permit holder for being  
1901 out of compliance with an order for support, as defined in Section  
1902 93-11-153. The procedure for suspension of a permit for being out  
1903 of compliance with an order for support, and the procedure for the  
1904 reissuance or reinstatement of a permit suspended for that  
1905 purpose, and the payment of any fees for the reissuance or  
1906 reinstatement of a permit suspended for that purpose, shall be  
1907 governed by Section 93-11-157 or Section 93-11-163, as the case  
1908 may be. If there is any conflict between any provision of Section  
1909 93-11-157 or Section 93-11-163 and any provision of this chapter,  
1910 the provisions of Section 93-11-157 or 93-11-163, as the case may  
1911 be, shall control.

1912 **SECTION 33.** Section 67-3-59, Mississippi Code of 1972, is  
1913 amended as follows:

1914 67-3-59. (1) Except as \* \* \* provided in this subsection,  
1915 sales by wholesalers, distributors or manufacturers to persons who

1916 do not hold valid permits are unlawful; and any wholesaler,  
1917 distributor or manufacturer making such sales, or who sells any  
1918 beer or light wine on which the tax provided by law has not been  
1919 paid, shall, in addition to any other fines, penalties and  
1920 forfeitures, be subject to a penalty of Twenty-five Dollars  
1921 (\$25.00) for each \* \* \* sale. If all other applicable taxes are  
1922 paid, this penalty will not apply to the following: sales to  
1923 employees of the wholesaler; sales to nonprofit charitable and  
1924 civic organizations for special fund raising events provided that  
1925 the beer or light wine is not resold; sales to affiliated member  
1926 associations.

1927       (2) The commissioner may assess the penalty by giving notice  
1928 by \* \* \* mail, demanding payment within thirty (30) days from date  
1929 of delivery of the notice. \* \* \*

1930       The proceeds of all penalties shall be deposited by the  
1931 commissioner with the other monies collected by him and shall be  
1932 disposed of as provided by law.

1933       **SECTION 34.** Section 75-23-25, Mississippi Code of 1972, is  
1934 amended as follows:

1935       75-23-25. The State Tax Commission shall prescribe, adopt  
1936 and enforce rules and regulations relating to the administration  
1937 and enforcement of the Unfair Cigarette Sales Law.

1938       The commission is hereby empowered to and may from time to  
1939 time undertake and make or cause to be made one or more cost  
1940 surveys for the state or such trading area or areas as it shall  
1941 define and when a cost survey shall have been made by or approved  
1942 by it, it shall be permissible to use the cost survey as provided  
1943 in \* \* \* Section 75-23-19(b) \* \* \*. The commission may revoke or  
1944 suspend the license issued under the provisions of this law or the  
1945 tobacco tax law of this state, of any person who refuses or  
1946 neglects to comply with any provisions of this article or any rule  
1947 or regulation of the commission prescribed under this article.

1948 Whenever any person fails to comply with any provision of the  
1949 Unfair Cigarette Sales Law or any rule or regulation of the  
1950 commission promulgated thereunder, the commission \* \* \*, or a  
1951 hearing officer or the board of review, as designated by the  
1952 commissioner, after a show cause hearing, may revoke or suspend  
1953 the license held by the person.

1954 Any ruling, order or decision of the commission shall be  
1955 subject to review, as provided by law, in any court of competent  
1956 jurisdiction in the county in which the person affected resides.

1957 **SECTION 35.** Section 25-43-1.102, Mississippi Code of 1972,  
1958 is brought forward as follows:

1959 25-43-1.102. As used in this chapter, the following terms  
1960 shall have the meanings ascribed to them in this section unless  
1961 the context otherwise requires:

1962 (a) "Agency" means a board, commission, department,  
1963 officer or other administrative unit of this state, including the  
1964 agency head, and one or more members of the agency head or agency  
1965 employees directly or indirectly purporting to act on behalf or  
1966 under the authority of the agency head. The term does not include  
1967 the Legislature or any of its component units, the judiciary or  
1968 any of its component units or the Governor. The term does not  
1969 include a political subdivision of the state or any of the  
1970 administrative units of a political subdivision. Furthermore, the  
1971 Board of Trustees of State Institutions of Higher Learning, or any  
1972 college or university thereunder, shall be exempt from the  
1973 provisions of this chapter until July 1, 2005, at which time this  
1974 exemption shall stand repealed. To the extent it purports to  
1975 exercise authority subject to any provision of this chapter, an  
1976 administrative unit otherwise qualifying as an "agency" must be  
1977 treated as a separate agency even if the unit is located within or  
1978 subordinate to another agency.

1979                   (b) "Agency head" or "head of the agency" means an  
1980 individual or body of individuals in whom the ultimate legal  
1981 authority of the agency is vested by any provision of law.

1982                   (c) "Agency proceeding" or "proceeding" means the  
1983 process by which an agency considers:

1984                   (i) A declaratory opinion pursuant to Section  
1985 25-43-2.103, or

1986                   (ii) A rule pursuant to Article III of this  
1987 chapter.

1988                   (d) "Agency record" means the official rule-making  
1989 record of an agency pursuant to Section 25-43-3.112.

1990                   (e) "Declaratory opinion" means an agency opinion  
1991 rendered in accordance with the provisions of Section 25-43-2.103.

1992                   (f) "Order" means an agency action of particular  
1993 applicability that determines the legal rights, duties,  
1994 privileges, immunities or other legal interests of one or more  
1995 specific persons. An order shall be in writing signed by a person  
1996 with authority to render the order, or if more than one (1) person  
1997 has such authority by at least that number of such persons as  
1998 jointly have the authority to render the order, or by a person  
1999 authorized to render the order on behalf of all such persons. The  
2000 term does not include an executive order issued by the Governor  
2001 pursuant to Section 25-43-1.104, an opinion issued by the Attorney  
2002 General pursuant to Section 7-5-25, an opinion issued by the  
2003 Ethics Commission pursuant to Section 25-4-17, or a declaratory  
2004 opinion rendered in accordance with Section 25-43-2.103.

2005                   (g) "Person" means an individual, partnership,  
2006 corporation, association, governmental subdivision or unit  
2007 thereof, or public or private organization or entity of any  
2008 character, and includes another agency.

2009                   (h) "Provision of law" or "law" means the whole or a  
2010 part of the federal or state Constitution, or of any federal or  
2011 state (i) statute, (ii) case law or common law, (iii) rule of

2012 court, (iv) executive order, or (v) rule or order of an  
2013 administrative agency.

2014 (i) "Rule" means the whole or a part of an agency  
2015 regulation or other statement of general applicability that  
2016 implements, interprets or prescribes:

2017 (i) Law or policy, or

2018 (ii) The organization, procedure or practice  
2019 requirements of an agency. The term includes the amendment,  
2020 repeal or suspension of an existing rule. "Rule" does not  
2021 include:

2022 1. A regulation or statement concerning only  
2023 the internal management of an agency which does not directly and  
2024 substantially affect the procedural or substantive rights or  
2025 duties of any segment of the public;

2026 2. A regulation or statement that establishes  
2027 criteria or guidelines to be used by the staff of an agency in  
2028 performing audits, investigations or inspections, settling  
2029 commercial disputes, negotiating commercial arrangements or in the  
2030 defense, prosecution or settlement of cases, if disclosure of the  
2031 criteria or guidelines would:

2032 a. Enable law violators to avoid  
2033 detection;

2034 b. Facilitate disregard of requirements  
2035 imposed by law; or

2036 c. Give a clearly improper advantage to  
2037 persons who are in an adverse position to the state;

2038 3. A regulation or statement that only  
2039 establishes specific prices to be charged for particular goods or  
2040 services sold by an agency;

2041 4. A regulation or statement concerning only  
2042 the physical servicing, maintenance or care of agency owned or  
2043 operated facilities or property;

2044                   5. A regulation or statement relating only to  
2045 the use of a particular facility or property owned, operated or  
2046 maintained by the state or any of its subdivisions, if the  
2047 substance of the regulation or statement is adequately indicated  
2048 by means of signs or signals to persons who use the facility or  
2049 property;

2050                   6. A regulation or statement directly related  
2051 only to inmates of a correctional or detention facility, students  
2052 enrolled in an educational institution or patients admitted to a  
2053 hospital, if adopted by that facility, institution or hospital;

2054                   7. A form whose contents or substantive  
2055 requirements are prescribed by rule or statute, and instructions  
2056 for the execution or use of the form;

2057                   8. An agency budget;

2058                   9. A compact or agreement between an agency  
2059 of this state and one or more agencies of another state or states;  
2060 or

2061                   10. An opinion of the Attorney General  
2062 pursuant to Section 7-5-25, an opinion of the Ethics Commission  
2063 pursuant to Section 25-4-17, or an Executive Order of the  
2064 Governor.

2065                   (j) "Rule-making" means the process for formulation and  
2066 adoption of a rule.

2067                   **SECTION 36.** Sections 27-3-29, 27-7-71, 27-7-73, 27-9-47,  
2068 27-13-43, 27-13-45, 27-19-337, 27-55-41, 27-55-549, 27-57-29,  
2069 27-59-43, 27-59-317, 27-61-35, 27-65-45, 27-65-47, 27-65-49,  
2070 27-67-23, 27-67-25, 27-67-27, 27-69-43 and 63-21-61, Mississippi  
2071 Code of 1972, which provide for hearings and appeals from certain  
2072 actions of the State Tax Commission, are repealed.

2073                   **SECTION 37.** Nothing in this act shall affect or defeat any  
2074 assessment, refund claim, request for waiver of a tax penalty or  
2075 the suspension, revocation, surrender, seizure or denial of  
2076 permit, tag or title or the administrative appeal or judicial

2077 appeal thereof where the initial date of said assessment, refund  
2078 claim, tag penalty, denial, notice of the intent to suspend,  
2079 notice of the intent to revoke, request for surrender or order for  
2080 seizure is before the date on which this act becomes effective.  
2081 The provisions of the laws relating to the administrative appeal  
2082 or judicial review of such actions which were in effect prior to  
2083 the effective date of this act are expressly continued in full  
2084 force, effect and operation for the purpose of providing an  
2085 administrative appeal and/or judicial review of any assessment,  
2086 refund claim, request for waiver of a tag penalty or the  
2087 suspension, revocation, surrender, seizure or denial of a permit,  
2088 tag or title where the initial date of said assessment, refund  
2089 claim, tag penalty, denial, notice of the intent to suspend,  
2090 notice of the intent to revoke, request for surrender or order for  
2091 seizure is before the date on which this act becomes effective.

2092       **SECTION 38.** Sections 1 through 10 of this act shall be  
2093 codified as a separate chapter in Title 27, Mississippi Code of  
2094 1972.

2095       **SECTION 39.** This act shall take effect and be in force from  
2096 and after July 1, 2005.