

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2742
(As Sent to Governor)

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 OFFICERS 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 27-65-57, 27-69-9, 27-73-1, 67-3-29, 67-3-59 AND 75-23-25,
30 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND SECTION
31 27-65-27, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE CHAIRMAN OF
32 THE STATE TAX COMMISSION TO REFUSE TO ISSUE TO OR REVOKE THE
33 PERMIT TO ENGAGE IN BUSINESS UNDER THE SALES TAX LAW OF ANY PERSON
34 WHO HAS NOT SATISFIED ALL FINALLY DETERMINED TAX LIABILITIES TO
35 THE STATE OF MISSISSIPPI; TO AMEND SECTION 25-43-1.102,
36 MISSISSIPPI CODE OF 1972, TO REMOVE AN EXEMPTION THAT EXPIRES ON
37 JULY 1, 2005, FROM THE DEFINITION OF THE TERM "AGENCY" UNDER THE
38 ADMINISTRATIVE PROCEDURES LAW; TO AMEND SECTION 25-43-2.103,
39 MISSISSIPPI CODE OF 1972, TO MAKE IT CLEAR THAT AGENCIES MAY
40 PROVIDE INFORMAL RESPONSES TO INQUIRIES AND THAT SUCH REPOSSES
41 SHALL NOT BE CONSIDERED DECLARATORY OPINIONS UNDER THE
42 ADMINISTRATIVE PROCEDURES LAW; TO REPEAL SECTIONS 27-3-29,
43 27-7-71, 27-7-73, 27-9-47, 27-13-43, 27-13-45, 27-19-337,
44 27-55-41, 27-55-549, 27-57-29, 27-59-43, 27-59-317, 27-61-35,
45 27-65-45, 27-65-47, 27-65-49, 27-67-23, 27-67-25, 27-67-27,
46 27-69-43 AND 63-21-61, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR
47 APPEALS FROM CERTAIN ACTIONS OF THE STATE TAX COMMISSION; AND FOR
48 RELATED PURPOSES.

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

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

51 (a) "Agency" means the commissioner acting directly or
52 through his duly authorized officers, agents, representatives and
53 employees, to perform duties and powers prescribed by the laws of
54 this state to be performed by the Chairman of the State Tax
55 Commission, the Commissioner of Revenue or the State Tax
56 Commission, except as provided in Section 27-3-31 for those
57 matters with respect to which the chairman and associate
58 commissioners of the State Tax Commission act collectively as a
59 commission.

60 (b) "Board of review" means the board of review of the
61 State Tax Commission as appointed by the commissioner under
62 Section 2 of this act, and also means a panel of the board of
63 review when an appeal is considered by a panel of the board of
64 review instead of the board of review en banc.

65 (c) "Commissioner" means the Chairman of the State Tax
66 Commission.

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

71 (e) "Denial" means the final decision of the staff of
72 the agency to deny the claim, request for waiver or application
73 being considered. In this context, staff of the agency does not
74 include the board of review or the commission. "Denial" does not
75 mean the act of returning or refusing to consider a claim, request
76 for waiver or application for permit, title or tag by the staff of
77 the agency due to a lack of information and/or documentation
78 unless the return or refusal is in response to a representation by
79 the person who filed the claim, request for waiver or application
80 in issue that information and/or documentation indicated by the
81 staff of the agency to be lacking cannot or will not be provided.

82 (f) "Designated representative" means an individual who
83 represents a person in an administrative appeal before a hearing

84 officer of the agency, before the board of review or before the
85 commission.

86 (g) "Last known address" when referring to the mailing
87 of a notice of intent to suspend, revoke or to order the surrender
88 and/or seizure of the permit, tag or title or to the mailing of a
89 denial of permit, tag or title, means the last mailing address of
90 the person being sent the notice as it appears on the record of
91 the agency in regard to the permit, tag or title in issue. All
92 other references to "last known address" in Sections 1 through 10
93 of this act mean the official mailing address that the hearing
94 officer, the board of review or the commission secretary has for
95 the addressee in their file on the administrative appeal in which
96 the document or item is being mailed to the addressee. The
97 addressee is presumed to have received any document or item mailed
98 to his official mailing address. The commissioner, by regulation,
99 shall prescribe the procedure for establishing an official mailing
100 address in the administrative appeal process and the procedure for
101 changing the official mailing address. It is the responsibility
102 of the addressee to make sure that his official mailing address is
103 correct.

104 (h) "Mail," "mailed" or "mailing" means placing the
105 document or item referred to in First Class United States mail,
106 postage prepaid, addressed to the person to whom the document or
107 item is to be sent at the last known address of that person.
108 Where a person is represented in an administrative appeal before a
109 hearing officer, the board of review or the commission by a
110 designated representative, the terms "mail," "mailed" or "mailing"
111 when referring to sending a document or item to that person shall
112 also mean placing the document or item referred to in First Class
113 United States mail, postage prepaid, to the last known address of
114 that person's designated representative. Mailing to the
115 designated representative of a taxpayer, permittee, tag holder or

116 title interest holder shall constitute mailing and notice to the
117 taxpayer, permittee, tag holder or title interest holder.

118 (i) "Permit" means a type of license or permit that the
119 agency is authorized to issue, suspend or revoke, such as a sales
120 tax permit, a beer permit, a tobacco permit, a dealer license, or
121 designated agent status, but does not include any type of permit
122 issued under the Local Option Alcoholic Beverage Control Law,
123 Section 67-1-1 et seq. or under the Mississippi Native Wine Law of
124 1976, Section 67-5-1 et seq.

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

127 (k) "Person" means a natural person, partnership,
128 limited partnership, corporation, limited liability company,
129 estate, trust, association, joint venture, other legal entity or
130 other group or combination acting as a unit, and includes the
131 plural as well as the singular in number. "Person" includes the
132 state, county, municipal, other political subdivision and any
133 agency, institution or instrumentality thereof, but only when used
134 in the context of a taxpayer, permittee, tag holder or title
135 interest holder.

136 (l) "Refund claim" means a claim made in writing by a
137 taxpayer and received by the agency wherein the taxpayer indicates
138 that he overpaid taxes to the agency and requests a refund of the
139 overpayment and/or a credit against current or future taxes for
140 the overpayment.

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

144 (n) "Tag" means a type of license tag or plate for a
145 motor vehicle or trailer that the agency is authorized under the
146 Mississippi Motor Vehicle Privilege Tax Law, Sections 27-19-1 et
147 seq., or under the Motor Vehicle Dealer Tag Permit Law, Sections
148 27-19-301 et seq., to issue or approve before issuance, but does

149 not include other types of license tags or plates issued by the
150 county tax collectors except for personalized license tags and
151 only to the extent that the agency determines under Section
152 27-19-48 that a personalized license tag applied for is considered
153 obscene, slandering, insulting or vulgar in ordinary usage or
154 demands the surrender or orders the seizure of the tag where
155 issued in error.

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

158 (p) "Tag penalty" means the penalties imposed under
159 Sections 27-19-63 and 27-51-43 for any delinquency in the payment
160 of motor vehicle privilege tax and ad valorem tax on a motor
161 vehicle which can be waived by the agency for good reason shown.
162 Pursuant to Section 27-51-103, imposition of this ad valorem tag
163 penalty at the maximum rate of twenty-five percent (25%) also
164 results in ineligibility for the credit against motor vehicle ad
165 valorem taxes provided by that statute. Waiver of the twenty-five
166 percent (25%) delinquency penalty by the agency under Section
167 27-51-43 shall reinstate credit eligibility.

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

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

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

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

180 **SECTION 2.** (1) There is hereby created a board of review
181 within the agency to conduct the duties assigned to it in Sections

182 1 through 10 of this act and any other responsibility as assigned
183 by the commissioner. The board of review shall be composed of
184 qualified employees of the agency appointed to the board by the
185 commissioner. The commissioner shall determine the number of
186 members on the board of review and may increase or decrease this
187 number as needed. The commissioner is authorized to remove and/or
188 replace a member of the board of review with or without cause.

189 (2) The board of review may perform its duties and
190 responsibilities en banc or in panels of not less than three (3)
191 members. When an appeal or other matter is considered by a panel,
192 only the members on that panel may deliberate and vote on the
193 appeal or matter being considered. The decision of a panel shall
194 be deemed the final decision of the board of review. Nothing in
195 this section shall prevent a member of the board of review from
196 attending and/or participating in a hearing on an appeal being
197 conducted before a panel on which he is not a member.

198 (3) No business shall be transacted by either the board of
199 review en banc or by a panel of the board of review without the
200 presence of a quorum. Three (3) members shall constitute a quorum
201 for both the board of review and a panel of the board of review.

202 (4) The commissioner shall designate one (1) member of the
203 board of review to be the chairman of the board of review. The
204 chairman of the board of review shall preside at any meeting or
205 hearing of the board of review en banc and at any meeting or
206 hearing of a panel of the board of review where he is a member of
207 that panel. In case of the absence of the chairman of the board
208 of review at a meeting or hearing of the board of review en banc
209 or in the case of a meeting or hearings of a panel of which he is
210 not a member, the chairman of the board of review shall designate
211 another member of the board of review to preside at the meeting or
212 hearing. If circumstances do not permit such designation prior to
213 the meeting or hearing being convened, the member of the board of
214 review with the most tenure on the board of review shall preside.

215 The presiding officer of a meeting or hearing of the board of
216 review en banc or of a panel of the board of review, shall be
217 responsible for the taking of minutes of such meeting or hearing.

218 **SECTION 3.** (1) Any taxpayer aggrieved by an assessment of
219 tax by the agency, by the agency's denial of a refund claim, or by
220 the denial of a waiver of tag penalty, and who wishes to contest
221 the action of the agency shall, within thirty (30) days from the
222 date of the action, file an appeal in writing with the board of
223 review requesting a hearing and correction of the contested action
224 specifying in detail the relief requested and any other
225 information that might be required by regulation.

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

241 (3) At a hearing before the board of review on a tax
242 assessment, denial of refund claim, or denial of waiver of a tag
243 penalty, the board of review shall try the issues presented,
244 according to law and the facts and within the guidelines
245 established by regulation. The hearing before the board of review
246 shall be informal and no official transcript will be made of the
247 hearing. At the earliest practical date after the hearing, the

248 members of the board of review that heard the appeal shall make a
249 determination on the matter presented and notify the taxpayer of
250 its findings by mailing a copy of its order to the taxpayer. If
251 the order involves the appeal of a denial of a waiver of tag
252 penalty, a copy of the order shall also be mailed to the tax
253 collector that imposed the penalty. If in the order the board of
254 review orders the taxpayer to pay a tax assessment, the taxpayer
255 shall, within thirty (30) days from the date of the order, pay the
256 amount ordered to be paid or appeal the order of the board of
257 review to the commission. After the thirty-day period, if the tax
258 determined by the board of review to be due is not paid and an
259 appeal from the order of the board of review is not made to the
260 commission, the agency shall proceed to collect the tax assessment
261 as determined by the board of review.

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

278 (5) Upon receipt of a written appeal from an order of the
279 board of review affirming a tax assessment, refund claim denial or
280 denial of waiver of a tag penalty, the commission secretary shall

281 schedule a hearing before the commission on the appeal. A notice
282 of this hearing shall be mailed to the taxpayer advising the
283 taxpayer of the date, time and location of hearing. The taxpayer
284 or his designated representative shall attend the hearing unless a
285 request is made to and granted by the commission to allow the
286 taxpayer to submit his position in writing or by electronic
287 transmission in lieu of attendance. Failure of the taxpayer or
288 his designated representative to attend a hearing or to submit his
289 position in writing or by electronic transmission by the date
290 specified by the commission or by the hearing date, if no date was
291 specified, shall constitute a withdrawal of the appeal.

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

309 (7) If in its order the commission orders a taxpayer to pay
310 a tax assessment, the taxpayer shall, within thirty (30) days from
311 the date of the order, pay the amount ordered to be paid or
312 properly appeal said order of the commission to chancery court as
313 provided in Section 4 of this act. After the thirty-day period,

314 if the tax determined by the commission to be due is not paid and
315 an appeal from the commission order has not been properly filed,
316 the agency shall proceed to collect the tax assessment as affirmed
317 by the commission. If in its order the commission determines that
318 the taxpayer has overpaid his taxes, the agency shall refund or
319 credit to the taxpayer, as provided by law, the amount of
320 overpayment as determined and set out in the order.

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

347 (9) Nothing in this section shall bar a taxpayer from timely
348 applying to the commissioner as otherwise provided by law for a
349 tax refund or for a revision in tax.

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

365 (2) A petition under subsection (1) of this section shall be
366 filed in the chancery court of the county or judicial district in
367 which the taxpayer has a place of business or in the Chancery
368 Court of the First Judicial District of Hinds County, Mississippi;
369 however, a resident taxpayer may file the petition in the chancery
370 court of the county or judicial district in which he is a
371 resident.

372 (3) A petition filed under subsection (1) of this section
373 that appeals an order of the commission affirming a tax
374 assessment, shall be accompanied by a surety bond approved by the
375 clerk of the court in a sum double the amount in controversy,
376 conditioned to pay the judgment of the court. The clerk shall not
377 approve a bond unless the bond is issued by a surety company
378 qualified to write surety bonds in this state. As an alternative
379 to the posting of bond, a taxpayer appealing an order of the

380 commission affirming a tax assessment may, prior to the filing of
381 the petition, pay to the agency, under protest, the amount ordered
382 by the commission to be paid and seek a refund of such taxes, plus
383 interest thereon.

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

413 part, it shall determine the amount of tax or refund due,
414 including interest and, if applicable, penalty to date, and enter
415 such order or judgment as it deems proper. Interest and penalty
416 included in this determination shall be computed by the court
417 based on the methods for computing penalty and interest as
418 specified by law for the type of tax in issue. Either the State
419 Tax Commission or the taxpayer, or both, shall have the right to
420 appeal from the order of the chancery court to the Supreme Court
421 as in other cases. If an appeal is taken from the order of the
422 chancery court, the bond provided for in subsection (3) of this
423 section shall continue to remain in place until a final decision
424 is rendered in the case.

425 **SECTION 5.** (1) If the agency determines that there is a
426 basis for suspension, surrender, seizure or revocation of a
427 permit, tag or title issued or approved by the agency, the agency
428 shall give the permittee, tag holder, title interest holder in the
429 permit, tag or title, written notice of its intent to suspend,
430 revoke or to order the surrender and/or seizure of the permit, tag
431 or title. The notice of intent shall be mailed or hand delivered
432 to the permittee, tag holder or title interest holder involved,
433 shall set forth the facts and conduct that provide the basis for
434 the intended action and shall advise the permittee, tag holder or
435 title interest holder involved of the date, time and location of a
436 show cause hearing that is at a minimum of thirty (30) days from
437 the date of the notice. At the hearing, the permittee, tag holder
438 or title interest holder shall show cause why the permit, tag or
439 title in issue should not be suspended, surrendered, seized or
440 revoked. The show cause hearing shall be informal and the rules
441 of evidence shall be relaxed. The hearing shall be conducted by
442 the board of review or by a single hearing officer as designated
443 by the commissioner. As soon as practical after the show cause
444 hearing, the hearing officer or the members of the board of review
445 that conducted the hearing shall make a determination as to

446 whether the intended action or any other action should be taken in
447 regard to the permit, tag or title in issue. The hearing officer
448 or board of review shall enter an order based on this
449 determination and a copy of this order shall be mailed to the
450 permittee, tag holder or title interest holder involved notifying
451 same of the decision and the action taken.

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

468 (3) Upon receipt of a written appeal from an order of a
469 hearing officer or the board of review regarding a show cause
470 hearing on a permit, tag or title, the commission secretary shall
471 schedule a hearing before the commission on this appeal. A notice
472 of the hearing shall be mailed to the person who filed the appeal
473 to advise him of the date, time and location of hearing. In the
474 case of an appeal from a show cause hearing on a title, the notice
475 of hearing shall also be mailed to any other title interest
476 holders in the motor vehicle or manufactured housing in issue.
477 The person who filed the appeal or his designated representative
478 shall attend the hearing. Failure of this person or his

479 designated representative to attend a hearing shall constitute a
480 withdrawal of the appeal.

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

496 (5) At any time after the filing of an appeal with the
497 commission under this section, an appeal may be withdrawn. A
498 withdrawal of an appeal can be made voluntarily by the person
499 appealing or may occur involuntarily as the result of his failure
500 to appear at a scheduled hearing, or by any other act or failure
501 that the commission determines represents a failure on the part of
502 that person to prosecute his appeal. A voluntary withdrawal shall
503 be in writing or by electronic transmission and sent from the
504 person appealing or his designated representative to the
505 commission secretary. If the withdrawal of appeal is involuntary,
506 the commission shall note on its minutes the involuntary
507 withdrawal of the appeal and the basis for the withdrawal. Once
508 an appeal is withdrawn, whether voluntary or involuntary, the
509 order from the show cause hearing from which the appeal was taken
510 shall become final and not subject to further review by the

511 commission or a court. The agency shall then proceed in
512 accordance with law based on such final action.

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

535 (2) Upon receipt of a written appeal from a denial of a
536 permit, tag or title, a hearing shall be scheduled before the
537 board of review unless it is determined that the relief requested
538 in the written appeal should be granted without a hearing. A
539 notice of the hearing shall be mailed to the person appealing
540 advising him of the date, time and location of hearing. If the
541 appeal involves the denial of a title, the notice of hearing shall
542 also be mailed to all other title interest holders in the motor
543 vehicle or manufactured housing in issue, including both those

544 that appear on a current title and those that appear on the
545 application that was denied. The notice may contain a statement
546 as to the basis for the denial of the permit, tag or title. The
547 person appealing or his designated representative shall attend the
548 hearing unless a request is made to and granted by the board of
549 review to allow him to submit his position in writing or by
550 electronic transmission in lieu of attendance. Failure of the
551 person appealing, or his designated representative, to attend a
552 hearing or to submit his position in writing or by electronic
553 transmission in lieu of attendance by the date specified by the
554 board of review or by the hearing date, if no date is specified,
555 shall constitute a withdrawal of the appeal.

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

570 (4) The order of the board of review involving the denial of
571 a permit, tag or title shall be final unless within thirty (30)
572 days from the date of the order, the applicant appeals the order
573 to the commission. In the case of an order of the board of review
574 involving a review of the denial of a title, any title interest
575 holder in the motor vehicle or manufactured housing in issue may
576 appeal the order to the commission. The appeal shall be in

577 writing, request a hearing and reversal or modification of the
578 order of the board of review, specify in detail the relief
579 requested, contain any other information that is required by
580 regulation and be filed with the commission secretary. Failure to
581 timely file a written appeal with the commission secretary within
582 the thirty-day period will make the order of the board of review
583 being appealed final and not subject to further review by the
584 commission or a court other than as to the issue of whether a
585 written appeal from the order of the board of review was timely
586 filed with the commission secretary.

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

600 (6) At any hearing before the commission on an appeal of an
601 order from the board of review involving the denial of a permit,
602 tag or title, two (2) members of the commission shall constitute a
603 quorum. At the hearing, the commission shall try the issues
604 presented according to law and the facts and pursuant to any
605 guidelines established by regulation. The rules of evidence shall
606 be relaxed at the hearing and the hearing shall be taken down by a
607 court reporter. After reaching a decision on the issues
608 presented, the commission shall enter its order setting forth its
609 findings and decision on the appeal. A copy of the order of the

610 commission shall be mailed to the person who filed the appeal with
611 the commission to notify him of the findings and decision of the
612 commission. In the case of an appeal involving a title, a copy of
613 the order of the commission shall also be mailed to all title
614 interest holders in the motor vehicle or manufactured housing in
615 issue.

616 (7) At any time after the filing of an appeal with the board
617 of review, or from the board of review to the commission under
618 Sections 1 through 10 of this act, an appeal can be withdrawn. A
619 withdrawal of an appeal may be made voluntarily by the person who
620 filed the appeal or may occur involuntarily by the person failing
621 to appear at a scheduled hearing, by failing to make a written
622 submission or electronic transmission to the board of review in
623 lieu of attendance by the date specified by the board or by the
624 hearing date, if no date was specified, or by any other act or
625 failure that the board of review or the commission determines
626 represents a failure on the part of this person to prosecute his
627 appeal. Any voluntary withdrawal shall be in writing or by
628 electronic transmission and sent by the person appealing or his
629 designated representative to the chairman of the board of review,
630 if the appeal being withdrawn is to the board of review, or to the
631 commission secretary, if the appeal being withdrawn is to the
632 commission. If the withdrawal of appeal is involuntary, the
633 administrative appeal body from whom the appeal is being withdrawn
634 shall note on its minutes the involuntary withdrawal of the appeal
635 and the basis for the withdrawal. Once an appeal is withdrawn,
636 whether voluntary or involuntary, the action from which the appeal
637 was taken, whether the original denial or the order of the board
638 of review, shall become final and not subject to further review by
639 the board of review, the commission or a court. The agency shall
640 then proceed in accordance with law based on such final action.

641 **SECTION 7.** (1) The order of the commission entered in
642 accordance with Section 5 or 6 of this act shall be final unless

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

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

661 (3) The review by the chancery court of the order of the
662 commission on a petition filed under subsection (1) of this
663 section shall be based on the record made before the commission.
664 Before filing a petition under subsection (1) of this section, the
665 petitioner shall obtain from the commission secretary an estimate
666 of the cost to prepare the entire record of the commission and
667 shall pay to the commission secretary the amount of the estimate.
668 If, upon the preparation of the record, it is determined that the
669 estimate paid was insufficient to pay the actual cost of the
670 preparation of the record, the commission secretary shall mail to
671 the petitioner a written notice of the deficiency. The petitioner
672 shall pay the deficiency to the commission secretary within thirty
673 (30) days from the date of this written notice. If upon the
674 preparation of the record, it is determined that the estimate paid
675 by the petitioner exceeds the actual cost of the preparation of

676 the record, the commission secretary shall remit to the petitioner
677 the amount by which the estimate paid exceeds the actual cost.
678 The chancery court shall dismiss with prejudice any petition filed
679 where it is shown that the petitioner failed to pay prior to
680 filing the petition the estimated cost for preparation of the
681 record of the commission or failed to pay any deficiency in the
682 estimate within thirty (30) days of a notice of deficiency.

683 (4) Upon the filing of the petition under subsection (1) of
684 this section, the clerk of the court in the which the petition is
685 filed shall issue a summons to the State Tax Commission requiring
686 the commission to answer or otherwise respond to the petition
687 within thirty (30) days of service. The summons shall be served
688 on the State Tax Commission by personal service on the
689 commissioner as the chief executive officer of the State Tax
690 Commission.

691 (5) Upon the filing of an answer and/or response by the
692 State Tax Commission to the petition filed under subsection (1) of
693 this section, and upon the filing of the record made before the
694 commission with the clerk of the court, the chancery court shall,
695 upon the motion of either party, establish a schedule for the
696 filing of briefs in the action. The scope of review of the
697 chancery court in an action filed under subsection (1) of this
698 section shall be limited to a review of the record made before the
699 commission to determine if the action of the commission is
700 unlawful for the reason that it was:

- 701 (a) Not supported by substantial evidence;
702 (b) Arbitrary or capricious;
703 (c) Beyond the power of the commission to make; or
704 (d) In violation of some statutory or constitutional
705 right of the petitioner.

706 (6) No relief shall be granted based upon the chancery
707 court's finding of harmless error by the commission in complying
708 with any procedural requirement; however, in the event that there

709 is a finding of prejudicial error in the proceedings, the cause
710 shall be remanded to the commission for a rehearing consistent
711 with the findings of the court.

712 (7) The State Tax Commission, the petitioner, or both, shall
713 have the right to appeal from the order of the chancery court to
714 the Supreme Court as in other cases.

715 **SECTION 8.** (1) Except as otherwise provided in this
716 section, it shall be unlawful for the commission, the
717 commissioner, the commission secretary, the agency, or an officer,
718 agent or employee of the agency, to divulge or make known in any
719 manner the information contained in the files, records and orders
720 of the agency, a hearing officer of the agency, the board of
721 review or the commission in regard to an appeal to a hearing
722 officer, the board of review or the commission under Sections 1
723 through 10 of this act.

724 (2) For purposes of this section, the term "appellant" means
725 the taxpayer, permittee, tag holder or title interest holder who
726 filed the appeal to the board of review or the commission under
727 Sections 1 through 10 of this act which resulted in the files,
728 records and orders of that appeal. For purposes of this section,
729 when applied to the files, records and orders regarding a matter
730 brought before a hearing officer of the agency or before the board
731 of review for a show cause hearing, the term "appellant" shall
732 mean the permittee, tag holder or title interest holder in the
733 permit, tag or title that was the subject of the show cause
734 hearing.

735 (3) The commission, the commissioner, the commission
736 secretary, the agency, hearing officer or an agent or employee of
737 the agency is permitted to divulge and make known information
738 otherwise prohibited from disclosure under subsection (1) of this
739 section in any of the following circumstances:

740 (a) Where the information is being disclosed as a
741 result of complying with the provisions of Sections 1 through 10

742 of this act and/or with regulations promulgated to enforce the
743 provisions of Sections 1 through 10 of this act.

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

746 (c) Where the information is being provided or
747 disclosed pursuant to a written authorization executed by the
748 appellant as prescribed by regulation.

749 (d) Where the information is being provided or
750 disclosed in the course of a court action in which the agency, the
751 commission, an agency officer or an agency employee and the
752 appellant are parties, including, but not limited to, an action
753 brought under Sections 1 through 10 of this act or in the course
754 of the bankruptcy case of the appellant.

755 (e) Where the information is being provided to the
756 Internal Revenue Service or a taxing authority of another state
757 under an information exchange agreement where similar information
758 can be obtained by the agency from the Internal Revenue Service or
759 state taxing authority receiving the information.

760 (f) Where the information is being provided pursuant to
761 the International Registration Plan (IRP) or the International
762 Fuel Tax Agreement (IFTA) or any regulations, rules or procedures
763 adopted under such plan or agreement.

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

766 (h) Where the information is being provided to the
767 State Auditor or his employees in the course of his audit of the
768 agency; however, the prohibitions against disclosure which apply
769 to the agency shall also apply to the State Auditor and his
770 employees or former employees.

771 (i) Where the information is being provided to the
772 Attorney General or any other attorney representing the state or
773 the agency in an action brought by the appellant to set aside the
774 tax, in an action brought by the state or agency to recover the

775 tax imposed, or in an action where the appellant is being
776 prosecuted for a crime under the tax laws of this state.

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

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

792 (3) Nothing in subsection (1) of this section shall prohibit
793 the inspection or disclosure of the minutes of the commission
794 except to the extent that such minutes reflect the specific amount
795 of a tax assessment or refund claim or the specific amount of tax
796 or refund claim determined by the commission to be due.

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

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

806 **SECTION 9.** Except as to the determination of whether a tag
807 penalty should be waived under Section 27-51-43, the provisions of

808 Sections 1 through 10 of this act shall not apply to any action
809 taken by the agency, commissioner or commission in regard to ad
810 valorem taxes, including, but not limited to, the determination
811 under Section 27-31-107 as to whether property is entitled to a
812 new or expanded enterprise exemption, the duties and actions
813 performed under the Homestead Exemption Law of 1946, being Section
814 27-33-1 et seq., the actions taken as the result of the
815 examination of the recapitulation of the assessment rolls of the
816 counties under Section 27-35-113, the actions relating to the
817 examination of the assessment rolls under Section 27-35-127, and
818 the ad valorem assessment of railroads, public service
819 corporations, nuclear generating plants, railcar companies,
820 airline companies, motor vehicles, manufactured homes and mobile
821 homes. The provisions of Sections 1 through 10 of this act shall
822 not apply to any action of the agency, commissioner or commission
823 under the Local Option Alcoholic Beverage Control Law, being
824 Section 67-1-1 et seq. or any action under the Mississippi Native
825 Wine Law of 1976, being Section 67-5-1 et seq.

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

830 (2) By issuance of a subpoena under his signature and seal,
831 the commissioner may require any person to attend a hearing before
832 a hearing officer, the board of review or the commission and to
833 give testimony and/or produce documents or other things at that
834 hearing. If any person subpoenaed by the commissioner fails to
835 attend the hearing, refuses to testify or answer any material
836 question at the hearing or refuses to produce at the hearing any
837 document or thing subpoenaed, the commissioner is authorized to
838 institute proceedings in the circuit court of the county where
839 such person resides or is found to compel compliance with the
840 subpoena.

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

843 25-41-3. For purposes of this chapter, the following words
844 shall have the meaning ascribed herein, to wit:

845 (a) "Public body" means * * * any executive or
846 administrative board, commission, authority, council, department,
847 agency, bureau or any other policy making entity, or committee
848 thereof, of the State of Mississippi, or any political subdivision
849 or municipal corporation of the state, whether such entity be
850 created by statute or executive order, which is supported wholly
851 or in part by public funds or expends public funds, and * * * any
852 standing, interim or special committee of the Mississippi
853 Legislature. There shall be exempted from the provisions of this
854 chapter:

855 (i) The judiciary, including all jury
856 deliberations;

857 (ii) Public and private hospital staffs, public
858 and private hospital boards and committees thereof;

859 (iii) Law enforcement officials;

860 (iv) The military;

861 (v) The State Probation and Parole Board;

862 (vi) The Workers' Compensation Commission;

863 (vii) Legislative subcommittees and legislative
864 conference committees;

865 (viii) The arbitration council established in
866 Section 69-3-19; * * *

867 (ix) License revocation, suspension and
868 disciplinary proceedings held by the Mississippi State Board of
869 Dental Examiners; and

870 (x) Hearings and meetings of the State Tax
871 Commission and the hearing officers and the board of review of the
872 State Tax Commission as provided in Section 8, Senate Bill
873 No. 2742, 2005 Regular Session.

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

879 **SECTION 12.** Section 27-7-51, Mississippi Code of 1972, as
880 amended by House Bill No. 1195, 2005 Regular Session, is amended
881 as follows:

882 27-7-51. (1) If, upon examination of a return made under
883 the provisions of this article, it appears that the correct amount
884 of tax is greater or less than that shown in the return, the tax
885 shall be recomputed. Any overpayment of tax so determined shall
886 be credited or refunded to the taxpayer. If the correct amount of
887 tax is greater than that shown in the return of the taxpayer, the
888 commissioner shall make his assessment of additional tax due by
889 mail or by personal delivery of the assessment to the taxpayer,
890 which assessment shall constitute notice and demand for payment.
891 The taxpayer shall be given a period of thirty (30) days from the
892 date of the notice in which to pay the additional tax due,
893 including penalty and interest as hereinafter provided, and if the
894 sum is not paid within the period of thirty (30) days, the
895 commissioner shall proceed to collect it under the provisions of
896 Sections 27-7-55 through 27-7-67, provided that within the period
897 of thirty (30) days the taxpayer may appeal to the board of review
898 as provided by law.

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

905 (3) In case of failure to pay any additional taxes as
906 assessed under this section, there may be added to the additional

907 amount assessed a penalty of one-half of one percent (1/2 of 1%)
908 of the amount of the additional tax if the failure is for not more
909 than one (1) month, with an additional one-half of one percent
910 (1/2 of 1%) for each additional month or fraction thereof during
911 which the failure continues, not to exceed twenty-five percent
912 (25%) in the aggregate.

913 (4) Where the reported net income of a taxpayer is increased
914 by the Internal Revenue Service, a taxpayer who, without action by
915 the commissioner, amends a return filed under this article on the
916 basis of a change in taxable income made by the Internal Revenue
917 Service, and pays the additional tax due * * * within thirty (30)
918 days after agreeing to the federal change (and has received
919 statement of the federal changes to which agreement has been made
920 or payment thereof), shall add interest to the additional tax at
921 the rate of one percent (1%) per month from due date of the
922 original return. If the additional tax, based on changes in
923 taxable income by the Internal Revenue Service, is assessed by the
924 commissioner under subsection (1) of this section, in addition to
925 the interest there may be added a penalty of one-half of one
926 percent (1/2 of 1%) of the additional tax due if the failure is
927 for not more than one (1) month, with an additional one-half of
928 one percent (1/2 of 1%) for each additional month or fraction
929 thereof during which the failure to pay continues, not to exceed
930 twenty-five percent (25%) in the aggregate, unless it is shown
931 that the failure is due to reasonable cause and not due to willful
932 neglect.

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

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

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

950 **SECTION 13.** Section 27-7-53, Mississippi Code of 1972, as
951 amended by House Bill No. 1195, 2005 Regular Session, is amended
952 as follows:

953 27-7-53. (1) (a) Except as otherwise provided in this
954 section, if a return is timely filed by the taxpayer but the tax
955 due is not paid, the commissioner shall make his assessment of tax
956 due by mail or by personal delivery of the assessment to the
957 taxpayer, which assessment shall constitute notice and demand for
958 payment. The taxpayer shall be given a period of thirty (30) days
959 from the date of the notice in which to pay the tax due, including
960 penalty and interest as hereinafter provided, and if the sum is
961 not paid within the period of thirty (30) days, the commissioner
962 shall proceed to collect it under the provisions of Sections
963 27-7-55 through 27-7-67 of this article; provided that within the
964 period of thirty (30) days the taxpayer may appeal to the board of
965 review as provided by law.

966 (b) (i) If an individual return is timely filed by the
967 taxpayer and the amount of tax liability (determined without
968 regard to interest, penalties, additions to the tax and additional
969 amounts) of the taxpayer exceeds Seventy-five Dollars (\$75.00) but
970 does not exceed Three Thousand Dollars (\$3,000.00), the taxpayer
971 may request to pay the tax liability through an installment
972 agreement. The taxpayer must file such a request with the return

973 and must provide all information required by the commissioner. If
974 the commissioner determines a taxpayer is financially unable to
975 pay the tax liability, the commissioner may enter into an
976 agreement to accept payment of the tax liability in installments
977 if:

978 1. The taxpayer (and the taxpayer's spouse if
979 the tax liability relates to a joint return), during any of the
980 preceding five (5) years, has not:

981 a. Failed to file any return required by
982 this chapter,

983 b. Failed to pay any tax required by
984 this chapter, or

985 c. Entered into an installment agreement
986 under this paragraph (b);

987 2. The agreement requires full payment of the
988 tax liability in equal installments within twelve (12) months from
989 the date the return was filed; and

990 3. The taxpayer agrees to comply with the
991 terms of the agreement.

992 (ii) Payments made through an installment
993 agreement shall be subject to the interest provisions of
994 subsection (3) of this section.

995 (iii) The commissioner may terminate an
996 installment agreement entered into under this paragraph (b) if he
997 determines the taxpayer provided inaccurate or incomplete
998 information before the agreement was entered into or he believes
999 the collection of the tax to which the agreement relates is in
1000 jeopardy.

1001 (iv) The commissioner may modify or terminate an
1002 installment agreement entered into under this paragraph (b) if the
1003 taxpayer fails to:

1004 1. Pay any installment due under the
1005 agreement;

1006 2. Pay any other tax liability due under this
1007 chapter when the liability is due; or

1008 3. Provide a statement of financial condition
1009 required by the commissioner.

1010 (2) If no return is made by a taxpayer required by this
1011 chapter to make a return, the commissioner shall determine the
1012 taxpayer's liability from the best information available, which
1013 determination shall be prima facie correct for the purpose of this
1014 article, and the commissioner shall forthwith make an assessment
1015 of the tax so determined to be due by mail or by personal delivery
1016 of the assessment to the taxpayer, which assessment shall
1017 constitute notice and demand for payment. The taxpayer shall be
1018 given a period of thirty (30) days from the date of the notice in
1019 which to pay the tax due, including penalty and interest as
1020 hereinafter provided, and if the sum is not paid within the period
1021 of thirty (30) days, the commissioner shall proceed to collect it
1022 under the provisions of Sections 27-7-55 through 27-7-67 of this
1023 article; provided that within said period of thirty (30) days the
1024 taxpayer may appeal to the board of review as provided by law.

1025 (3) Interest at the rate of one percent (1%) per month from
1026 the due date of the return may be added or assessed in addition to
1027 the tax due as * * * provided in subsections (1) and (2) of this
1028 section.

1029 (4) In case of failure to file a return as required by this
1030 chapter, there may be added to the amount required to be shown as
1031 tax on the return a penalty of five percent (5%) of the amount of
1032 the tax if the failure is for not more than one (1) month, with an
1033 additional five percent (5%) for each additional month or fraction
1034 thereof during which the failure continues, not to exceed
1035 twenty-five percent (25%) in the aggregate. The failure to file a
1036 return penalty shall not be less than One Hundred Dollars
1037 (\$100.00).

1038 (5) In case of failure to pay the amount shown as tax on any
1039 return specified in subsections (1) and (2) of this section on or
1040 before the date prescribed for payment of the tax, determined with
1041 regard to any extension of time for payment or installment
1042 agreement, or both, there may be added to the amount shown as tax
1043 on the return one-half of one percent (1/2 of 1%) of the amount of
1044 the tax if the failure is for not more than one (1) month, with an
1045 additional one-half of one percent (1/2 of 1%) for each additional
1046 month or fraction thereof during which the failure continues, not
1047 to exceed twenty-five percent (25%) in the aggregate.

1048 **SECTION 14.** Section 27-7-55, Mississippi Code of 1972, is
1049 amended as follows:

1050 27-7-55. If any taxpayer, liable for the payment of income
1051 taxes, penalties or interest, fails or refuses to pay them after
1052 receiving the notice and demands as provided in Sections 27-7-49,
1053 27-7-51 and 27-7-53, and if the taxpayer has not filed a timely
1054 appeal to the board of review as provided by law, the commissioner
1055 shall file a notice of tax lien for the income taxes, penalties
1056 and interest with the circuit clerk of the county in which the
1057 taxpayer resides or owns property, which shall be enrolled on the
1058 judgment roll. Immediately upon receipt of the notice of tax lien
1059 for income taxes, penalties and interest, the circuit clerk shall
1060 enter upon the judgment roll, in the appropriate columns, the name
1061 of the taxpayer as judgment debtor, the name of the commissioner
1062 or State Tax Commission as judgment creditor, the amount of the
1063 taxes, penalties and interest, and the date and time of
1064 enrollment. The judgment shall be valid as against mortgagees,
1065 pledgees, entrusters, purchasers, judgment creditors, and other
1066 persons from the time of filing with the clerk. The amount of the
1067 judgment shall be a debt due the State of Mississippi and remain a
1068 lien upon all property and rights to property belonging to the
1069 taxpayer, both real and personal, including choses in action, with
1070 the same force and like effect as any enrolled judgment of a court

1071 of record, and shall continue until satisfied; * * * however, the
1072 judgment shall not be a lien upon the property of the taxpayer for
1073 a longer period than seven (7) years from the date of the filing
1074 of the notice of tax lien for income taxes, penalties and interest
1075 unless an action is brought on the lien before the expiration of
1076 such time or unless the commissioner refiles the notice of tax
1077 lien before the expiration of such time. The judgment shall be a
1078 lien upon the property of the taxpayer for a period of seven (7)
1079 years from the date of refileing such notice of tax lien unless an
1080 action is brought on the lien before the expiration of such time
1081 or unless the commissioner refiles such notice of tax lien before
1082 the expiration of such time. There shall be no limit upon the
1083 number of times that the commissioner may refile notices of tax
1084 liens. The judgment shall serve as authority for the issuance of
1085 writs of execution, writs of attachment, writs of garnishment or
1086 other remedial writs. The commissioner may issue warrants for
1087 collection of income taxes from such judgments in lieu of the
1088 issuance of any remedial writ by the circuit clerk.

1089 Upon failure to pay the taxes imposed under this article by
1090 any taxpayer who has executed any bond, the commissioner shall
1091 give notice of the failure to the sureties of the bond and demand
1092 payment of the tax, penalties and interest within ten (10) days.
1093 If the sureties of the taxpayer's bond shall fail or refuse to pay
1094 the penal sum demanded within the ten (10) days allowed, the
1095 commissioner shall file a notice of tax lien with the circuit
1096 clerk of the county in which the sureties reside or own property,
1097 which shall be enrolled upon the judgment roll, and the
1098 commissioner may proceed to collect from the sureties as in this
1099 section provided in this section for collecting from any judgment
1100 debtor.

1101 The commissioner is hereby authorized to pay the clerk's fee
1102 for enrolling certificates of indebtedness and any court costs
1103 that may be adjudged against the commission or commissioner out of

1104 funds appropriated by the Legislature to defray expenses of the
1105 State Tax Commission.

1106 **SECTION 15.** Section 27-7-79, Mississippi Code of 1972, is
1107 amended as follows:

1108 27-7-79. (1) The commissioner shall have exclusive
1109 jurisdiction and be charged with the administration and
1110 enforcement of the provisions of this article, except as otherwise
1111 provided.

1112 (2) The commissioner, for the purpose of ascertaining the
1113 correctness of any return, or for the purpose of making a return
1114 where none has been made, is hereby authorized, by any agent
1115 designated by the commissioner for that purpose, to examine any
1116 books, papers, records or memoranda, bearing upon the matter
1117 required to be included in the return, and may require the
1118 attendance of persons rendering a return or of any officer or
1119 employee of such person, or of any person having knowledge in the
1120 premises, and may take his testimony with reference to the matter
1121 required by law to be included in the return, with power to
1122 administer oaths to such person or persons.

1123 * * *

1124 (3) If any person summoned to appear under this article to
1125 testify, or produce books, papers or other data, shall refuse to
1126 do so, the chancery court for the district in which the person
1127 resides shall have jurisdiction by appropriate process to compel
1128 such attendance, testimony or production of books, papers or other
1129 data.

1130 (4) The commissioner, with the approval of the Governor, may
1131 appoint and remove such officers, agents, deputies, clerks and
1132 employees as he may deem necessary, such persons to have such
1133 duties and powers as the commissioner may, from time to time,
1134 prescribe. The salaries of all officers, agents and employees
1135 employed by the commissioner shall be such as he may prescribe,
1136 with the approval of the Governor, not to exceed such amounts as

1137 may be appropriated by the Legislature, and the members of the
1138 commission and such officers, agents and employees shall be
1139 allowed such reasonable and necessary traveling and other expenses
1140 as may be incurred in the performance of their duties, not to
1141 exceed the amount appropriated therefor by the Legislature.

1142 (5) The commissioner shall designate certain special agents
1143 appointed under this section and evidenced by a written
1144 certificate of appointment under the seal of the commission, of
1145 which judicial notice shall be taken by all courts of this state.
1146 Such agents, when in possession of a warrant issued under
1147 authority of this article, shall have all the powers and duties of
1148 the sheriff in enforcing the provisions of the article relating to
1149 the warrant thus issued, and in making arrests of persons
1150 obstructing or seeking to obstruct the execution of the warrant,
1151 or in serving any writ, notice or order connected with the
1152 enrolled judgment for which the warrant is issued by whatever
1153 officer or authority of court issued.

1154 (6) The commissioner may require such of the officers,
1155 agents, and employees, as he may designate, to give bond for the
1156 faithful performance of their duties, in such form and with such
1157 securities as he may determine, and all premiums on such bonds
1158 shall be paid by the commissioner out of the monies appropriated
1159 for the purposes of this article.

1160 (7) All officers empowered by law to administer oaths and
1161 the members of the commission, and such officers as it may
1162 designate, shall have power to administer an oath to any person or
1163 to take the acknowledgment of any person in respect to any return
1164 or report required by this article or the rules and regulations of
1165 the commissioner.

1166 (8) All agents of the commissioner shall have, for
1167 identification purposes, proper credentials signed by the chairman
1168 of the commission.

1169 (9) The commissioner shall prepare and publish annually
1170 statistics reasonably available with respect to the operation of
1171 this law, including classification of taxpayers and of the income,
1172 the amounts allowed as deductions, exemptions and credits, and
1173 also a statement of the cost of administering this article and any
1174 other facts deemed pertinent and valuable.

1175 **SECTION 16.** Section 27-7-315, Mississippi Code of 1972, is
1176 amended as follows:

1177 27-7-315. (1) If any overpayment of any tax, interest or
1178 penalty levied or provided for by Article 1 of this chapter, or in
1179 this article, is not refunded to the taxpayer as provided in
1180 Section 27-7-313 within six (6) months after the final date for
1181 filing returns as prescribed by law, the taxpayer may treat the
1182 failure to refund as a denial of a refund claim and appeal in the
1183 manner provided for in Section 3, Senate Bill No. 2742, 2005
1184 Regular Session. * * *

1185 * * *

1186 (2) If any overpayment of tax as reflected on a return or
1187 amended return filed, and verified by the commissioner or
1188 determined to be due by the commissioner or commission when no
1189 overpayment is shown on a return or amended return, is not
1190 refunded within ninety (90) days after the prescribed due date of
1191 the return, the date the return is filed, or the date the
1192 commissioner or commission determines a refund as being due when
1193 no overpayment is shown on a return or amended return, whichever
1194 is later, interest at the rate of one percent (1%) per month shall
1195 be allowed on the overpayment computed for the period after
1196 expiration of the ninety-day period provided in this subsection to
1197 the date of payment.

1198 **SECTION 17.** Section 27-7-317, Mississippi Code of 1972, is
1199 amended as follows:

1200 27-7-317. (1) Any employer who makes an overpayment of the
1201 tax required to be remitted to the commissioner by Section

1202 27-7-309 may file application with the commissioner, on a form
1203 prescribed by the commissioner, to have the amount of the
1204 overpayment refunded to him or to have the amount credited against
1205 the payment which he is required to make for a subsequent
1206 quarterly period, but the refund or credit shall be allowed only
1207 to the extent that the amount of the overpayment was not withheld
1208 under Section 27-7-305 by the employer.

1209 (2) If the commissioner shall determine that the employer is
1210 not entitled to the refund or credit as applied for, he shall so
1211 notify the employer of the denial of the refund claim.

1212 (3) Unless written application for refund or credit is
1213 received by the commissioner from the employer within three (3)
1214 years from the date the overpayment was made, no refund or credit
1215 shall be allowed.

1216 **SECTION 18.** Section 27-9-49, Mississippi Code of 1972, is
1217 amended as follows:

1218 27-9-49. If, upon examination of any return made under this
1219 chapter, it appears that an amount of estate tax, interest or
1220 penalties has been paid in excess of that properly due, then the
1221 amount in excess shall be immediately refunded to the executor at
1222 such time as the commissioner has completed his investigation and
1223 has determined the correct estate tax liability of the estate.

1224 If the liability of an estate for estate taxes is contested
1225 with the federal government and, as a result of that contest, the
1226 commissioner determines that the Mississippi estate tax, interest
1227 or penalties have been overpaid, then the overpayment shall be
1228 promptly refunded to the executor upon receipt of the federal
1229 closing letter or the decision of the tax court in lieu of the
1230 federal closing letter.

1231 A refund of estate tax, interest or penalties made pursuant
1232 to this chapter shall bear interest at the rate of one-half of one
1233 percent (1/2 of 1%) per month, or major fraction thereof, for the
1234 period which is the later of the due date of the estate tax return

1235 inclusive of all approved extensions, or the final payment of the
1236 estate tax, interest or penalty and continuing until the date the
1237 commission has completed its investigation and has determined that
1238 a refund is due.

1239 If any claim for overpayment of estate tax, interest or
1240 penalty is denied, the executor may appeal such decision to the
1241 board of review as provided by law.

1242 **SECTION 19.** Section 27-13-23, Mississippi Code of 1972, is
1243 amended as follows:

1244 27-13-23. (1) If a return is timely filed by the taxpayer
1245 but the tax is not paid, the commissioner shall make his
1246 assessment of tax due by mail or by personal delivery of the
1247 assessment to the taxpayer, which assessment shall constitute
1248 notice and demand for payment. The taxpayer shall be given a
1249 period of thirty (30) days from the date of the notice in which to
1250 pay the tax due, including penalty and interest as * * * provided
1251 in this section, and if the sum is not paid within the thirty-day
1252 period, the commissioner shall proceed to collect it under the
1253 provisions of Sections 27-13-29 through 27-13-41 of this chapter;
1254 provided that within the thirty-day period the taxpayer may appeal
1255 to the board of review as provided by law.

1256 (2) If no return is made by a taxpayer required by this
1257 chapter to make a return, the commissioner shall determine the
1258 taxpayer's liability from the best information available, which
1259 determination shall be prima facie correct for the purpose of this
1260 chapter, and the commissioner shall forthwith make an assessment
1261 of the tax so determined to be due by mail or by personal delivery
1262 of the assessment to the taxpayer, which assessment shall
1263 constitute notice and demand for payment. The taxpayer shall be
1264 given a period of thirty (30) days from the date of the notice in
1265 which to pay the tax due, including penalty and interest as * * *
1266 provided in this section, and if the sum is not paid within the
1267 thirty-day period, the commissioner shall proceed to collect it

1268 under the provisions of Sections 27-13-29 through 27-13-41 of this
1269 chapter; provided that within the thirty-day period the taxpayer
1270 may appeal to the board of review as provided by law.

1271 (3) Interest at the rate of one percent (1%) per month from
1272 the due date of the return shall be added or assessed in addition
1273 to the tax due as * * * provided in subsections (1) and (2) of
1274 this section.

1275 (4) In case of failure to file a return as required by this
1276 chapter, unless it can be shown that the failure is due to
1277 reasonable cause and not due to willful neglect, there shall be
1278 added to the amount required to be shown as tax on the return a
1279 penalty of five percent (5%) of the amount of the tax if the
1280 failure is for not more than one (1) month, with an additional
1281 five percent (5%) for each additional month or fraction thereof
1282 during which the failure continues, not to exceed twenty-five
1283 percent (25%) in the aggregate.

1284 (5) In case of failure to pay the amount shown as tax on any
1285 return specified in subsections (1) and (2) of this section on or
1286 before the date prescribed for payment of the tax, determined with
1287 regard to any extension of time for payment, unless it is shown
1288 that the failure is due to reasonable cause and not due to willful
1289 neglect, there shall be added to the amount shown as tax on the
1290 return one-half of one percent (1/2 of 1%) of the amount of the
1291 tax if the failure is for not more than one (1) month, with an
1292 additional one-half of one percent (1/2 of 1%) for each additional
1293 month or fraction thereof during which the failure continues, not
1294 to exceed twenty-five percent (25%) in the aggregate.

1295 **SECTION 20.** Section 27-13-25, Mississippi Code of 1972, is
1296 amended as follows:

1297 27-13-25. (1) If, upon examination of a return made under
1298 the provisions of this chapter, it appears that the correct amount
1299 of tax is greater or less than that shown in the return, the tax
1300 shall be recomputed. Any overpayment of tax so determined shall

1301 be credited or refunded to the taxpayer. If the correct amount of
1302 tax is greater than that shown in the return of the taxpayer, the
1303 commissioner shall make his assessment of additional tax due by
1304 certified mail or by personal delivery of the assessment to the
1305 taxpayer, which assessment shall constitute notice and demand for
1306 payment. The taxpayer shall be given a period of thirty (30) days
1307 after receipt of notice in which to pay the additional tax due,
1308 including penalty and interest as * * * provided in this section,
1309 and if the sum is not paid within the thirty-day period, the
1310 commissioner shall proceed to collect it under the provisions of
1311 Sections 27-13-29 through 27-13-41, provided that within the
1312 thirty-day period the taxpayer may appeal to the board of review
1313 as provided by law.

1314 (2) In the case of an overpayment of tax, interest shall be
1315 computed under the provisions of Section 27-7-315. In the case of
1316 an underpayment of tax, interest at the rate of one percent (1%)
1317 per month from the due date of the return shall be added or
1318 assessed in addition to the additional tax due as * * * provided
1319 in subsection (1) of this section.

1320 (3) In case of failure to pay any additional taxes as
1321 assessed under this section, unless it is shown that the failure
1322 is due to reasonable cause and not due to willful neglect, there
1323 shall be added to the additional amount assessed a penalty of
1324 one-half of one percent (1/2 of 1%) of the amount of the
1325 additional tax if the failure is for not more than one (1) month,
1326 with an additional one-half of one percent (1/2 of 1%) for each
1327 additional month or fraction thereof during which the failure
1328 continues, not to exceed twenty-five percent (25%) in the
1329 aggregate.

1330 **SECTION 21.** Section 27-13-29, Mississippi Code of 1972, is
1331 amended as follows:

1332 27-13-29. If any taxpayer, liable for the payment of
1333 franchise taxes, penalties or interest, fails or refuses to pay

1334 them after receiving the notice and demands as provided in Section
1335 27-13-23 or 27-13-25, and if such taxpayer has not filed a timely
1336 appeal to the board of review as provided by law, the commissioner
1337 shall file a notice of tax lien for the franchise taxes,
1338 penalties, and interest with the circuit clerk of the county in
1339 which the taxpayer resides or owns property, which, shall be
1340 enrolled on the judgment roll. Immediately upon receipt of the
1341 notice of tax lien for franchise taxes, penalties and interest,
1342 the circuit clerk shall enter upon the judgment roll, in the
1343 appropriate columns, the name of the taxpayer as judgment debtor,
1344 the name of the commissioner or State Tax Commission as judgment
1345 creditor, the amount of the taxes, penalties and interest, and the
1346 date and time of enrollment. The judgment shall be valid as
1347 against mortgagees, pledgees, entrusters, purchasers, judgment
1348 creditors, and other persons from the time of filing with the
1349 clerk. The amount of the judgment shall be a debt due the State
1350 of Mississippi and remain a lien upon all property and rights to
1351 property belonging to the taxpayer, both real and personal,
1352 including choses in action, with the same force and like effect as
1353 any enrolled judgment of a court of record, and shall continue
1354 until satisfied. Such judgment shall serve as authority for the
1355 issuance of writs of execution, writs of attachments, writs of
1356 garnishment or other remedial writs. The commissioner may issue
1357 warrants for collection of franchise taxes from such judgments in
1358 lieu of the issuance of any remedial writ by the circuit clerk.

1359 Upon failure to pay the taxes imposed under this chapter by
1360 any taxpayer who has executed any bond, the commissioner shall
1361 give notice of the failure to the sureties of such bond and demand
1362 payment of the tax, penalties and interest within ten (10) days.
1363 If the sureties of the taxpayer's bond shall fail or refuse to pay
1364 the penal sum demanded within the ten (10) days allowed, the
1365 commissioner shall file a notice of tax lien with the circuit
1366 clerk of the county in which the sureties reside or own property,

1367 which shall be enrolled upon the judgment roll, and the
1368 commissioner may proceed to collect from the sureties as * * *
1369 provided in this section for collecting from any judgment debtor.

1370 The commissioner is hereby authorized to pay the clerk's fee
1371 for enrolling certificates of indebtedness and any court costs
1372 that may be adjudged against the commission or commissioner out of
1373 funds appropriated by the Legislature to defray expenses of the
1374 State Tax Commission.

1375 **SECTION 22.** Section 27-13-65, Mississippi Code of 1972, is
1376 amended as follows:

1377 27-13-65. (1) **Jurisdiction.** The commissioner shall have
1378 exclusive jurisdiction and be charged with the administration and
1379 enforcement of the provisions of this chapter, except as otherwise
1380 provided.

1381 (2) **Examine books.** The commissioner, for the purpose of
1382 ascertaining the correctness of any return, or for the purpose of
1383 making a return where none has been made, is hereby authorized, by
1384 any agent designated by the commissioner, for that purpose, to
1385 examine any books, papers, records or memoranda, bearing upon the
1386 matter required to be included in the return, and may require the
1387 attendance of persons rendering a return or of any officer or
1388 employee of such person, or of any person having knowledge in the
1389 premises, and may take his testimony with reference to the matter
1390 required by law to be included in such return, with power to
1391 administer oaths to such person or persons.

1392 (3) **Summons.** If any person summoned to appear under this
1393 chapter to testify, or produce books, papers or other data, shall
1394 refuse to do so, the chancery court for the district in which such
1395 person resides shall have jurisdiction by appropriate process to
1396 compel * * * attendance, testimony or production of books, papers
1397 or other data.

1398 (4) **Employees.** The commissioner, with the approval of the
1399 Governor, may appoint and remove such officers, agents, deputies,

1400 clerks and employees as he may deem necessary, such persons to
1401 have such duties and powers as the commissioner may, from time to
1402 time, prescribe. The salaries of all officers, agents and
1403 employees employed by the commissioner shall be such as he may
1404 prescribe, with the approval of the Governor, not to exceed such
1405 amounts as may be appropriated by the Legislature, and the members
1406 of the commission and such officers, agents and employees shall be
1407 allowed such reasonable and necessary traveling and other expenses
1408 as may be incurred in the performance of their duties not to
1409 exceed the amount appropriated therefor by the Legislature.

1410 (5) **Special agents.** The commissioner shall designate
1411 certain special agents appointed under this section and evidenced
1412 by a written certificate of appointment under the seal of the
1413 commission, of which judicial notice shall be taken by all courts
1414 of this state. Such agents, when in possession of a warrant
1415 issued under authority of this chapter, shall have all the powers
1416 and duties of the sheriff in enforcing the provisions of the
1417 chapter relating to the warrant thus issued, and in making arrests
1418 of persons obstructing or seeking to obstruct the execution of
1419 such warrant, or in serving any writ, notice or order connected
1420 with the enrolled judgment for which the warrant is issued by
1421 whatever officer or authority of court issued.

1422 (6) **Employees bond.** The commissioner may require such of
1423 the officers, agents and employees, as he may designate, to give
1424 bond for the faithful performance of their duties, in such form
1425 and with such securities as he may determine, and all premiums on
1426 such bonds shall be paid by the commissioner out of the monies
1427 appropriated for the purposes of this chapter.

1428 (7) **Administer oath.** All officers empowered by law to
1429 administer oaths and the members of the commission, and such
1430 officers as it may designate, shall have power to administer an
1431 oath to any person or to take the acknowledgment of any person in

1432 respect to any return or report required by this chapter or the
1433 rules and regulations of the commissioner.

1434 (8) **Credentials.** All agents of the commissioner shall have,
1435 for identification purposes, proper credentials signed by the
1436 chairman of the commission.

1437 (9) **Statistics.** The commissioner shall prepare and publish
1438 annually statistics reasonably available with respect to the
1439 operation of this law, as he may deem pertinent and valuable.

1440 * * *

1441 **SECTION 23.** Section 27-19-48, Mississippi Code of 1972, is
1442 amended as follows:

1443 27-19-48. (1) Owners of motor vehicles who are residents of
1444 this state, upon complying with the motor vehicle laws relating to
1445 registration and licensing of motor vehicles, and upon payment of
1446 the road and bridge privilege taxes, ad valorem taxes and
1447 registration fees as prescribed by law for private carriers of
1448 passengers, pickup trucks and other noncommercial motor vehicles,
1449 and upon payment of an additional fee in the amount provided in
1450 subsection (4)(a) of this section, shall be issued a personalized
1451 license tag of the same color as regular license tags to consist
1452 of the name of the county and not more than seven (7) letters of
1453 the alphabet or seven (7) numbers in lieu of the license tag
1454 numbering system prescribed by law. The purchaser of the
1455 personalized license tag may choose the combination of such
1456 letters or numbers, but no two (2) motor vehicles shall have the
1457 same combination of letters or numbers. In the event that the
1458 same combination of letters has been chosen by two (2) or more
1459 purchasers, the State Tax Commission shall assign a different
1460 number to each such purchaser which shall appear on the license
1461 tag following the combination of letters; * * * however, this
1462 combination shall not exceed seven (7) letters and/or numbers.
1463 The combination of letters and/or numbers written across the
1464 license tag shall be sufficiently large to be easily read but

1465 shall not be less than three (3) inches in height. No combination
1466 of letters or numbers which comprise words or expressions that are
1467 considered obscene, slandering, insulting or vulgar in ordinary
1468 usage shall be permitted, with the Chairman of the State Tax
1469 Commission having the responsibility of making this determination.
1470 If, however, such license plate is issued in error or otherwise
1471 and is determined by the chairman to be obscene, slanderous,
1472 insulting, vulgar or offensive, the chairman shall notify the
1473 owner that the license plate must be surrendered and that another
1474 personalized license plate may be selected by him and issued at no
1475 cost. Should the vehicle owner not desire another personalized
1476 license plate, the fee for such plate shall be refunded. In the
1477 event the owner fails to surrender the license plate after
1478 receiving proper notification, the chairman shall issue an order
1479 directing that the license plate be seized by agents of the State
1480 Tax Commission or any other duly authorized law enforcement
1481 personnel. * * *

1482 (2) For the purposes of this section the terms "motor
1483 vehicle" and "vehicle" include motorcycles.

1484 (3) Application for the personalized license tags shall be
1485 made to the county tax collector on forms prescribed by the State
1486 Tax Commission. The application form shall contain space for the
1487 applicant to make five (5) different choices for the combination
1488 of the letters and numbers in the order in which said combination
1489 is desired by the applicant. The application and the additional
1490 fee, less five percent (5%) thereof to be retained by the tax
1491 collector, shall be remitted to the State Tax Commission within
1492 seven (7) days of the date the application is made. The portion
1493 of the additional fee retained by the tax collector shall be
1494 deposited into the county general fund.

1495 (4) (a) Beginning with any registration year commencing on
1496 or after November 1, 1986, any person applying for a personalized
1497 license tag shall pay an additional fee which shall be in addition

1498 to all other taxes and fees. The additional fee paid shall be for
1499 a period of time to run concurrent with the vehicle's established
1500 license tag year. The additional fee of Thirty Dollars (\$30.00)
1501 is due and payable at the time the original application is made
1502 for a personalized tag and thereafter annually at the time of
1503 renewal registration as long as the owner retains the personalized
1504 tag. If the owner does not wish to retain the personalized tag,
1505 he must surrender it to the local county tax collector. The
1506 additional fee due at the time of renewal registration shall be
1507 collected by the county tax collector and remitted to the State
1508 Tax Commission on a monthly basis as prescribed by the commission.

1509 (b) The State Tax Commission shall deposit all taxes
1510 and fees into the State Treasury on the day collected. At the end
1511 of each month, the State Tax Commission shall certify the total
1512 fees collected under this section to the State Treasurer who shall
1513 distribute to the credit of the State General Fund Sixteen Dollars
1514 and Twenty-five Cents (\$16.25) of each additional fee and the
1515 remainder of each such additional fee shall be deposited to the
1516 credit of the State Highway Fund to be expended solely for the
1517 repair, maintenance, construction or reconstruction of highways.

1518 (5) A regular license tag must be properly displayed as
1519 required by law until replaced by a personalized license tag; and
1520 the regular license tag must be surrendered to the tax collector
1521 upon issuance of the personalized license tag. The tax collector
1522 shall issue up to two (2) license decals for the personalized
1523 license tag, which will expire the same month and year as the
1524 original license tag.

1525 (6) The applicant shall receive a refund of the fee paid for
1526 a personalized license tag if the personalized license tag is not
1527 issued to him because the combination of letters and numbers
1528 requested to be placed thereon is not available for any reason.

1529 (7) In the case of loss or theft of a personalized license
1530 tag, the owner may make application and affidavit for a

1531 replacement license tag as provided by Section 27-19-37. The fee
1532 for a replacement personalized license tag shall be Ten Dollars
1533 (\$10.00). The tax collector receiving such application and
1534 affidavit shall be entitled to retain and deposit into the county
1535 general fund five percent (5%) of the fee for such replacement
1536 license tag and the remainder shall be distributed in the same
1537 manner as funds from the sale of regular license tags.

1538 (8) The owner of a personalized license tag may make
1539 application for a duplicate of such tag. The fee for such
1540 duplicate personalized license tag shall be Ten Dollars (\$10.00).
1541 The tax collector receiving the application shall be entitled to
1542 retain and deposit into the county general fund five percent (5%)
1543 of the fee for such duplicate personalized license tag and the
1544 remainder shall be distributed in the same manner as funds from
1545 the sale of regular license tags. A duplicate personalized
1546 license tag may not be fastened to the rear of a vehicle and may
1547 not be utilized as a replacement for any personalized license tag
1548 issued pursuant to this section. Month decals and year decals
1549 shall not be issued for duplicate personalized license tags and
1550 month decals and year decals shall not be attached to duplicate
1551 personalized license tags.

1552 **SECTION 24.** Section 27-19-73, Mississippi Code of 1972, is
1553 amended as follows:

1554 27-19-73. The tax collector or the commission, as the case
1555 may be, is authorized and empowered to refund to any individual,
1556 firm or corporation any motor vehicle privilege license tax,
1557 permit or tag fee which has been paid or collected through error
1558 or otherwise when the person, individual, firm or corporation was
1559 not liable for such tax or fee or when the individual, firm or
1560 corporation has paid any such privilege tax or fee in excess of
1561 the sum properly due, whether such payments were made under
1562 protest or compulsion or not. Taxes erroneously paid within the
1563 meaning of this section shall include, but shall not be limited

1564 to, overpayments, double payments upon the same vehicle, payments
1565 upon vehicles not located within the State of Mississippi, and all
1566 other erroneous or illegal payments.

1567 All claims for refunds under this section shall be made
1568 within twelve (12) months from the date of the erroneous payment
1569 of * * * taxes or fees and the refunds, approved by the tax
1570 collector or commission, shall be made out of any monies collected
1571 by the tax collector or commission from the same source of
1572 revenue. If such source of revenue no longer exists, the refund
1573 shall come from the general fund collections. If such refund is
1574 approved by the tax collector, he shall issue a warrant to the
1575 claimant and deduct the proper amounts from his next settlement.
1576 If a claim for refund is disapproved, the claimant shall be
1577 notified of the disapproval and the reasons therefor. * * *

1578 **SECTION 25.** Section 27-55-535, Mississippi Code of 1972, is
1579 amended as follows:

1580 27-55-535. When special fuel is lost or destroyed in
1581 quantities of seven hundred fifty (750) gallons or more through
1582 explosion, fire, collision, storage tank wreckage, wreckage of
1583 loading or unloading facilities, such as pumps and lines, or acts
1584 of Providence while in storage in this state or while being
1585 transported in this state, the owner of the special fuel shall be
1586 entitled to tax credit or refund of the tax paid thereon.

1587 The commission shall be notified by the owner of the lost or
1588 destroyed special fuel within five (5) days after the loss or
1589 destruction is discovered. The commission shall make an
1590 investigation of the facts and circumstances surrounding the loss
1591 or destruction as may be reasonably necessary for the effective
1592 administration of this article.

1593 The claim shall be made in the name of the owner of the lost
1594 or destroyed special fuel and shall be signed by the owner or his
1595 authorized agent and filed within three (3) years after the date
1596 of loss. All * * * claims must be accompanied by proof

1597 satisfactory to the commission that the special fuel for which
1598 credit is claimed was destroyed by or through one of the means set
1599 forth in the first paragraph of this section, and in all cases
1600 where the special fuel alleged to have been destroyed was covered
1601 by insurance, the commission shall not approve such claims unless
1602 and until the insurer has acknowledged and actually paid the loss.

1603 Upon receipt of the claim the commission shall determine the
1604 amount of refund or tax credit due the claimant and in the case of
1605 refund the amount shall be refunded to the claimant as provided in
1606 Section 27-55-19.

1607 If the commission determines that any refund claim shall not
1608 be paid, it shall notify the claimant stating the reason or
1609 reasons why the claim is disallowed.

1610 A claimant may, within thirty (30) days after receipt of
1611 written notice of the disallowance of his claim, appeal to the
1612 board of review as provided by law.

1613 **SECTION 26.** Section 27-57-19, Mississippi Code of 1972, is
1614 amended as follows:

1615 27-57-19. When lubricating oil is lost or destroyed in
1616 quantities of two hundred fifty (250) gallons or more through
1617 explosion, fire, collision, storage tank wreckage, wreckage of
1618 loading or unloading facilities or other acts of Providence, only
1619 while in storage in this state or while being transported in this
1620 state, the owner of the lubricating oil shall be entitled to a
1621 refund of the tax paid thereon.

1622 The commission shall be notified by the owner of lubricating
1623 oil lost or destroyed within five (5) days after the loss or
1624 destruction is discovered. The commission shall make an
1625 investigation of the facts and circumstances surrounding the loss
1626 or destruction as may be reasonably necessary for the effective
1627 administration of this section.

1628 The claim shall be made in the name of the owner of the
1629 lubricating oil lost or destroyed, and shall be signed by the

1630 owner or his authorized agent and filed within three (3) years
1631 after the date of the loss. All * * * claims must be accompanied
1632 by proof satisfactory to the commission that the lubricating oil
1633 for which credit is claimed was destroyed as herein provided. In
1634 all cases where lubricating oil alleged to have been destroyed was
1635 covered by insurance, the commission shall not approve such claim
1636 unless and until the insurer has acknowledged and actually paid
1637 the loss.

1638 Upon the receipt of the claim, the commission shall determine
1639 the amount of refund or tax credit due to the claimant and in the
1640 case of refund the amount shall be refunded to the claimant as
1641 provided in Section 27-55-19. The refund shall be paid from
1642 current lubricating oil tax collections.

1643 If the commission determines that any refund claim shall not
1644 be paid or any tax credit allowed, it shall notify the claimant at
1645 the earliest possible date after it determines the claim cannot be
1646 allowed stating the reason or reasons why the claim is rejected.

1647 A claimant may, within thirty (30) days after the rejection
1648 of his claim, appeal to the board of review as provided by law.

1649 **SECTION 27.** Section 27-65-27, Mississippi Code of 1972, is
1650 amended as follows:

1651 27-65-27. (1) Any person who engages, or who intends to
1652 engage, in any business or activity which will subject such person
1653 to a privilege tax imposed by this chapter, shall apply to the
1654 commissioner for a permit to engage in and to conduct any business
1655 or activity upon the condition that he shall pay the tax accruing
1656 to the State of Mississippi under the provisions of this chapter,
1657 and shall keep adequate records of such business or activity as
1658 required by this chapter. By making an application for a permit
1659 issued pursuant to this section, a person agrees, regardless of
1660 his presence in this state, to:

1661 (a) Be subject to the jurisdiction of this state for
1662 purposes of taxation;

1663 (b) Collect and remit all taxes levied under this
1664 chapter on the type of business or activity to be conducted by the
1665 applicant;

1666 (c) Be subject to all the provisions of this chapter.

1667 (2) Upon receipt of the permit, the applicant shall be duly
1668 licensed under this chapter to engage in and conduct the business
1669 or activity. The permit shall continue in force so long as the
1670 person to whom it is issued shall continue in the same business at
1671 the same location, unless revoked by the commissioner for cause.

1672 (3) The commissioner shall require of every person desiring
1673 to engage in business within this state who maintains no permanent
1674 place of business within this state, of every person desiring to
1675 engage in the business of making sales of mobile homes, a cash
1676 bond or an approved surety bond in an amount sufficient to cover
1677 twice the estimated tax liability for a period of three (3)
1678 months. * * * However, * * * the bond shall in no case be less
1679 than One Hundred Dollars (\$100.00) and * * * the tax may be
1680 prepaid in lieu of filing bond if the amount is approved by the
1681 commissioner. This bond shall be filed with the commissioner
1682 prior to the issuance of a permit to do business and before any
1683 such person may engage in business within this state. Failure to
1684 comply with the provision will subject such person to the
1685 penalties provided by this chapter.

1686 (4) The commissioner is * * * authorized to deny the
1687 application for a permit or revoke the permit of any person who
1688 has failed or is failing to comply with any of the provisions of
1689 this chapter. * * * The commissioner may also deny the
1690 application for a permit or revoke the permit of any person who
1691 has failed to satisfy all of the finally determined tax
1692 liabilities owed by that person. As used in this subsection,
1693 "finally determined tax liabilities" means any state tax, fee,
1694 penalty and/or interest owed by a person to the Mississippi State
1695 Tax Commission where the assessment of the liability has been made

1696 against that person as provided by law and such assessment is not
1697 subject to any further timely filed administrative or judicial
1698 review. Revocation of such permit, or engaging or continuing in
1699 business after such permit is revoked or engaging in business
1700 without a permit, shall subject the person to all the penalties
1701 imposed by this chapter.

1702 (5) Any person liable for the tax who fails to obtain a
1703 permit from the commissioner, or who continues in business after
1704 such permit has been revoked, or who fails to make his returns for
1705 taxation as provided, or who fails to keep adequate records and
1706 invoices provided by this chapter, or who fails or refuses to
1707 permit inspection of such records, or who fails to pay any taxes
1708 due hereunder, shall forfeit his rights to do business in this
1709 state until he complies with all the provisions of this chapter
1710 and until he enters into a bond, with sureties, to be approved by
1711 the commissioner, in an amount not to exceed twice the amount of
1712 all taxes estimated to become due under this chapter by the person
1713 for any period of three (3) months, conditioned to comply with the
1714 provisions of this chapter, and pay all taxes legally due by him.

1715 (6) If any person is engaged in or continuing in this state
1716 in any business or activity without obtaining a permit, or after
1717 the permit has been revoked, or without filing a required bond, or
1718 without keeping and allowing inspection of all records required by
1719 this chapter, or without making a return, or returns, and without
1720 paying all taxes due by him hereunder, it shall be the duty of the
1721 commissioner to proceed by injunction to prevent the continuance
1722 of the business. Any temporary injunction enjoining the
1723 continuance of the business shall be granted without notice by a
1724 judge or chancellor now authorized to grant injunctions.

1725 **SECTION 28.** Section 27-65-57, Mississippi Code of 1972, is
1726 amended as follows:

1727 27-65-57. If any person liable for the payment of sales
1728 taxes, damages or interest fails or refuses to pay them after

1729 receiving the notice and demand as provided in Sections 27-65-35
1730 and 27-65-37, and if such person has not filed a timely appeal to
1731 the board of review as provided by law, the commissioner may file
1732 a notice of a tax lien for the sales taxes, damages and interest
1733 with the circuit clerk of the county in which the taxpayer resides
1734 or owns property which shall be enrolled as a judgment on the
1735 judgment roll.

1736 Immediately upon receipt of the notice of the tax lien for
1737 sales taxes, damages and interest, the circuit clerk shall enter
1738 the notice of a tax lien as a judgment upon the judgment roll and
1739 show in the appropriate columns the name of the taxpayer as
1740 judgment debtor, the name of the commissioner or State Tax
1741 Commission as judgment creditor, the amount of the taxes, damages
1742 and interest, and the date and time of enrollment. The judgment
1743 shall be valid as against mortgagees, pledgees, entrusters,
1744 purchasers, judgment creditors, and other persons from the time of
1745 filing with the clerk. The amount of the judgment shall be a debt
1746 due the State of Mississippi and remain a lien upon all property
1747 and rights to property belonging to the taxpayer, both real and
1748 personal, including choses in action, with the same force and like
1749 effect as any enrolled judgment of a court of record, and shall
1750 continue until satisfied. The judgment shall be the equivalent of
1751 any enrolled judgment of a court of record and shall serve as
1752 authority for the issuance of writs of execution, writs of
1753 attachment, writs of garnishment or other remedial writs. The
1754 commissioner may issue warrants for collection of sales taxes from
1755 such judgments, in lieu of the issuance of any remedial writ by
1756 the circuit clerk, as provided in Sections 27-65-59 and 27-65-61
1757 hereof; * * * however, * * * such judgment shall not be a lien
1758 upon the property of the taxpayer for a longer period than seven
1759 (7) years from the date of the filing of the notice of tax lien
1760 for sales taxes, damages and interest unless action be brought
1761 thereon before the expiration of such time or unless the

1762 commissioner refiles the notice of tax lien before the expiration
1763 of such time. The judgment shall be a lien upon the property of
1764 the taxpayer for a period of seven (7) years from the date of
1765 refiling the notice of tax lien unless action be brought thereon
1766 before the expiration of such time or unless the commissioner
1767 refiles the notice of tax lien before the expiration of such time.
1768 There shall be no limit upon the number of times that the
1769 commissioner may refile notices of tax liens.

1770 Upon failure to pay the taxes imposed under this chapter by
1771 any taxpayer who has executed any bond under provisions of this
1772 chapter, the commissioner shall give notice of the failure to the
1773 sureties of the bond and demand payment of the tax, damages and
1774 interest within ten (10) days. If the sureties on the taxpayer's
1775 bond shall fail or refuse to pay the penal sum demanded within the
1776 ten (10) days allowed, the commissioner shall file a notice of tax
1777 lien with the circuit clerk of the county in which the sureties
1778 reside or own property which shall be enrolled upon the judgment
1779 roll, and the commissioner may proceed to collect from the
1780 sureties as hereinafter provided for collecting from any judgment
1781 debtor.

1782 The commissioner is hereby authorized to pay the clerk's fee
1783 for enrolling the notice of tax lien out of funds appropriated by
1784 the Legislature to defray expenses of the State Tax Commission.

1785 **SECTION 29.** Section 27-69-9, Mississippi Code of 1972, is
1786 amended as follows:

1787 27-69-9. In addition to the penalties imposed in this
1788 chapter, after the second offense for any violation, the
1789 commissioner may revoke any permit which may have been issued to
1790 any person, or persons, violating any provisions of this chapter,
1791 or any rules or regulations promulgated by the commissioner under
1792 authority of this chapter * * *.

1793 The commissioner, in the event a permit is revoked, is
1794 required to notify by letter, all manufacturers, wholesalers and

1795 distributors having a permit required by this chapter, that the
1796 permit has been revoked, and such manufacturer, wholesaler and
1797 distributor is henceforth prohibited from selling taxable tobacco
1798 to such dealer or retailer.

1799 **SECTION 30.** Section 27-73-1, Mississippi Code of 1972, is
1800 amended as follows:

1801 27-73-1. (1) If any person, firm or corporation has paid,
1802 or shall hereafter pay to the Auditor of Public Accounts * * * or
1803 the Commissioner of Insurance, through error or otherwise, whether
1804 paid under protest or not, any ad valorem, privilege or excise tax
1805 for which the person, firm or corporation was not liable, or if
1806 any such taxpayer has paid any tax in excess of the sum properly
1807 due and such erroneous payment or overpayment has been paid into
1808 the proper treasury, the taxpayer shall be entitled to a refund of
1809 the taxes so erroneously paid. Taxes erroneously paid within the
1810 meaning of this section shall include double payment, or
1811 overpayment, or payment on state, United States, vacant and exempt
1812 land, and the purchase price paid for the redemption of lands
1813 erroneously sold for taxes.

1814 Claims for refund under the provisions of this section shall
1815 be filed with the Auditor of Public Accounts and shall be
1816 supported by proper documents showing the overpayment or erroneous
1817 payment for which claim is made. The * * * auditor is hereby
1818 authorized and required to make a careful investigation and audit
1819 of all such claims and if he shall find that the taxes or monies
1820 covered by the * * * claim have been erroneously paid into the
1821 treasury of the state, county, drainage or levee districts, he
1822 shall distribute the claim against each separate fund in
1823 proportion to the amount paid over to such fund in each case, and
1824 submit the audited claim with the voucher and evidence upon which
1825 the claim is based, to the Attorney General for his approval. The
1826 Attorney General shall have plenary power to require the claimant
1827 or the officer who collected the tax to furnish any * * *

1828 additional documents or information as may in his opinion be
1829 necessary or proper to enable him to determine the merits of the
1830 claim.

1831 If the Attorney General shall be of the opinion that the
1832 claim is in proper form and complies with the requirements of this
1833 section, he shall approve the claim and return it to the Auditor
1834 of Public Accounts, who shall thereupon file in his office the
1835 audited claim, together with the Attorney General's approval and
1836 all other documents relating to the claim, as a voucher, and issue
1837 his warrant on the State Treasurer in favor of the claimant for
1838 the amount of purchase money or taxes erroneously paid into the
1839 State Treasury. The auditor shall then certify to the clerk of
1840 the board of supervisors, the secretary of the drainage district
1841 board, or the secretary of the levee board, as the case may be,
1842 the amount, if any, found to be due to the claimant by the county,
1843 drainage district or levee district. Upon receipt of the
1844 certificate, the board of supervisors, or the commissioners of the
1845 drainage district or of the levee district, shall cause a warrant
1846 to be issued on the treasurer of the county or drainage or levee
1847 district, as the case may be, in favor of the claimant for the
1848 amount erroneously paid into their respective treasuries.

1849 If the Attorney General shall disapprove the claim, he shall
1850 return it to the Auditor of Public Accounts accompanied by his
1851 opinion which shall show the reason for his disapproval, whereupon
1852 the auditor shall promptly notify the claimant of the disapproval.
1853 A claimant taxpayer being aggrieved at the disapproval may, within
1854 six (6) months from the date thereof, file in the chancery court
1855 his petition for appeal and review. All * * * petitions for
1856 appeal and review shall be filed in the chancery court of the
1857 county in which the money for which refund is claimed was
1858 originally paid, and shall be accompanied by a bond in the sum of
1859 Five Hundred Dollars (\$500.00) conditioned to pay all costs which
1860 may accrue in the case, which bond shall be approved by the clerk

1861 of the * * * court. Upon the approval of the bond, the chancery
1862 clerk shall give the Attorney General and the Auditor of Public
1863 Accounts notice, as required by law, of the filing of the
1864 petition. It shall be the duty of the * * * auditor to promptly
1865 transmit to the court in which the appeal is pending a certified
1866 copy of the entire record of the claim as shown by the files in
1867 his office, which record shall be docketed by the clerk in the
1868 cause, and the controversy shall be tried by the court on such
1869 record. It shall be the duty of the Attorney General to defend on
1870 behalf of the state, and he may request the district attorney,
1871 county attorney or attorney for the drainage or levee district, as
1872 the case may be, to defend on behalf of the county, drainage or
1873 levee district. If the claimant taxpayer shall prevail, judgment
1874 shall be entered requiring the payment of the claim in like manner
1875 as if it had been duly approved by the Attorney General. If,
1876 however, the action of the Attorney General in disapproving the
1877 claim shall be affirmed by the court, judgment shall be entered
1878 against the appealing taxpayer for the costs of the proceedings.

1879 Nothing in this section shall be so construed as to authorize
1880 the recovery or repayment of any tax heretofore levied and
1881 collected by any special road district, drainage district, or
1882 separate school district, on account of, or upon the ground that
1883 the law authorizing such tax was unconstitutional, whether the
1884 unconstitutionality of such tax be based upon the creation or mode
1885 of operation of any special road district, drainage district or
1886 separate school district. Provided further, that nothing in this
1887 section shall be construed as authorizing the refunding of state
1888 taxes paid into the State Treasury through error, or otherwise, or
1889 satisfying a judgment or decree against the state except through
1890 an appropriation therefor by the Legislature.

1891 (2) This section shall not be construed as repealing or
1892 modifying Section 27-73-7, or any other law providing for the
1893 application for or the certification of a claim for refund, but

1894 shall be taken and construed as an additional and supplemental
1895 method of refunding taxes erroneously paid.

1896 **SECTION 31.** Section 67-3-29, Mississippi Code of 1972, is
1897 amended as follows:

1898 67-3-29. (1) The commissioner, or a hearing officer or the
1899 board of review, as designated by the commissioner, after a show
1900 cause hearing, shall revoke or suspend any permit granted by
1901 authority of this chapter to any person who shall violate any of
1902 the provisions of this chapter or the revenue laws of this state
1903 relating to engaging in transporting, storing, selling,
1904 distributing, possessing, receiving or manufacturing of wines or
1905 beers, or any person who shall hereafter be convicted of the
1906 unlawful sale of intoxicating liquor, or any person who shall
1907 allow or permit any form of illegal gambling or immorality on the
1908 premises described in such permit. The commissioner shall not
1909 revoke or suspend a permit of a retailer for the sale of light
1910 wine or beer to a person under the age of twenty-one (21) years
1911 until there has been a conviction of the permit holder or an
1912 employee of the permit holder for such violation.

1913 (2) If any person exercising any privilege taxable under the
1914 provisions of Chapter 71 of Title 27, Mississippi Code of 1972,
1915 shall willfully neglect or refuse to comply with the provisions of
1916 such chapter, or any rules or regulations promulgated by the
1917 commissioner under authority of such chapter, or the provisions of
1918 this chapter, including maintaining the qualifications of an
1919 applicant under Section 67-3-19, during the permit period, the
1920 commissioner shall be authorized to revoke or suspend the permit
1921 theretofore issued to the person * * *. Any person whose permit
1922 shall have been revoked by the commissioner shall be thereafter
1923 prohibited from exercising any privilege under the provisions of
1924 Chapter 71 of Title 27, Mississippi Code of 1972, for a period of
1925 two (2) years from the date of the revocation. The commissioner
1926 may, however, for good cause shown, grant a new permit upon such

1927 conditions as the commissioner may prescribe. Any person whose
1928 permit shall have been suspended by the commissioner shall be
1929 prohibited from exercising any privilege under the provisions of
1930 Chapter 71 of Title 27, Mississippi Code of 1972, during the
1931 period of the suspension. Failure of the person to comply with
1932 the terms of the suspension shall be cause for revocation of his
1933 permit, in addition to the other penalties provided by law.

1934 (3) In addition to the reasons specified in this section and
1935 other provisions of this chapter, the commissioner shall be
1936 authorized to suspend the permit of any permit holder for being
1937 out of compliance with an order for support, as defined in Section
1938 93-11-153. The procedure for suspension of a permit for being out
1939 of compliance with an order for support, and the procedure for the
1940 reissuance or reinstatement of a permit suspended for that
1941 purpose, and the payment of any fees for the reissuance or
1942 reinstatement of a permit suspended for that purpose, shall be
1943 governed by Section 93-11-157 or Section 93-11-163, as the case
1944 may be. If there is any conflict between any provision of Section
1945 93-11-157 or Section 93-11-163 and any provision of this chapter,
1946 the provisions of Section 93-11-157 or 93-11-163, as the case may
1947 be, shall control.

1948 **SECTION 32.** Section 67-3-59, Mississippi Code of 1972, is
1949 amended as follows:

1950 67-3-59. (1) Except as * * * provided in this subsection,
1951 sales by wholesalers, distributors or manufacturers to persons who
1952 do not hold valid permits are unlawful; and any wholesaler,
1953 distributor or manufacturer making such sales, or who sells any
1954 beer or light wine on which the tax provided by law has not been
1955 paid, shall, in addition to any other fines, penalties and
1956 forfeitures, be subject to a penalty of Twenty-five Dollars
1957 (\$25.00) for each * * * sale. If all other applicable taxes are
1958 paid, this penalty will not apply to the following: sales to
1959 employees of the wholesaler; sales to nonprofit charitable and

1960 civic organizations for special fund-raising events provided that
1961 the beer or light wine is not resold; sales to affiliated member
1962 associations.

1963 (2) The commissioner may assess the penalty by giving notice
1964 by * * * mail, demanding payment within thirty (30) days from date
1965 of delivery of the notice. * * *

1966 The proceeds of all penalties shall be deposited by the
1967 commissioner with the other monies collected by him and shall be
1968 disposed of as provided by law.

1969 **SECTION 33.** Section 75-23-25, Mississippi Code of 1972, is
1970 amended as follows:

1971 75-23-25. The State Tax Commission shall prescribe, adopt
1972 and enforce rules and regulations relating to the administration
1973 and enforcement of the Unfair Cigarette Sales Law.

1974 The commission is hereby empowered to and may from time to
1975 time undertake and make or cause to be made one or more cost
1976 surveys for the state or such trading area or areas as it shall
1977 define and when a cost survey shall have been made by or approved
1978 by it, it shall be permissible to use the cost survey as provided
1979 in * * * Section 75-23-19(b) * * *. The commission may revoke or
1980 suspend the license issued under the provisions of this law or the
1981 tobacco tax law of this state, of any person who refuses or
1982 neglects to comply with any provisions of this article or any rule
1983 or regulation of the commission prescribed under this article.

1984 Whenever any person fails to comply with any provision of the
1985 Unfair Cigarette Sales Law or any rule or regulation of the
1986 commission promulgated thereunder, the commission * * *, or a
1987 hearing officer or the board of review, as designated by the
1988 commissioner, after a show cause hearing, may revoke or suspend
1989 the license held by the person.

1990 Any ruling, order or decision of the commission shall be
1991 subject to review, as provided by law, in any court of competent
1992 jurisdiction in the county in which the person affected resides.

1993 **SECTION 34.** Section 25-43-1.102, Mississippi Code of 1972,
1994 is amended as follows:

1995 25-43-1.102. As used in this chapter, the following terms
1996 shall have the meanings ascribed to them in this section unless
1997 the context otherwise requires:

1998 (a) "Agency" means a board, commission, department,
1999 officer or other administrative unit of this state, including the
2000 agency head, and one or more members of the agency head or agency
2001 employees directly or indirectly purporting to act on behalf or
2002 under the authority of the agency head. The term does not include
2003 the Legislature or any of its component units, the judiciary or
2004 any of its component units or the Governor. The term does not
2005 include a political subdivision of the state or any of the
2006 administrative units of a political subdivision. * * * To the
2007 extent it purports to exercise authority subject to any provision
2008 of this chapter, an administrative unit otherwise qualifying as an
2009 "agency" must be treated as a separate agency even if the unit is
2010 located within or subordinate to another agency.

2011 (b) "Agency head" or "head of the agency" means an
2012 individual or body of individuals in whom the ultimate legal
2013 authority of the agency is vested by any provision of law.

2014 (c) "Agency proceeding" or "proceeding" means the
2015 process by which an agency considers:

2016 (i) A declaratory opinion pursuant to Section
2017 25-43-2.103, or

2018 (ii) A rule pursuant to Article III of this
2019 chapter.

2020 (d) "Agency record" means the official rule-making
2021 record of an agency pursuant to Section 25-43-3.112.

2022 (e) "Declaratory opinion" means an agency opinion
2023 rendered in accordance with the provisions of Section 25-43-2.103.

2024 (f) "Order" means an agency action of particular
2025 applicability that determines the legal rights, duties,

2026 privileges, immunities or other legal interests of one or more
2027 specific persons. An order shall be in writing signed by a person
2028 with authority to render the order, or if more than one (1) person
2029 has such authority by at least that number of such persons as
2030 jointly have the authority to render the order, or by a person
2031 authorized to render the order on behalf of all such persons. The
2032 term does not include an executive order issued by the Governor
2033 pursuant to Section 25-43-1.104, an opinion issued by the Attorney
2034 General pursuant to Section 7-5-25, an opinion issued by the
2035 Ethics Commission pursuant to Section 25-4-17, or a declaratory
2036 opinion rendered in accordance with Section 25-43-2.103.

2037 (g) "Person" means an individual, partnership,
2038 corporation, association, governmental subdivision or unit
2039 thereof, or public or private organization or entity of any
2040 character, and includes another agency.

2041 (h) "Provision of law" or "law" means the whole or a
2042 part of the federal or state Constitution, or of any federal or
2043 state (i) statute, (ii) case law or common law, (iii) rule of
2044 court, (iv) executive order, or (v) rule or order of an
2045 administrative agency.

2046 (i) "Rule" means the whole or a part of an agency
2047 regulation or other statement of general applicability that
2048 implements, interprets or prescribes:

2049 (i) Law or policy, or

2050 (ii) The organization, procedure or practice
2051 requirements of an agency. The term includes the amendment,
2052 repeal or suspension of an existing rule. "Rule" does not
2053 include:

2054 1. A regulation or statement concerning only
2055 the internal management of an agency which does not directly and
2056 substantially affect the procedural or substantive rights or
2057 duties of any segment of the public;

2058 2. A regulation or statement that establishes
2059 criteria or guidelines to be used by the staff of an agency in
2060 performing audits, investigations or inspections, settling
2061 commercial disputes, negotiating commercial arrangements or in the
2062 defense, prosecution or settlement of cases, if disclosure of the
2063 criteria or guidelines would:

2064 a. Enable law violators to avoid
2065 detection;

2066 b. Facilitate disregard of requirements
2067 imposed by law; or

2068 c. Give a clearly improper advantage to
2069 persons who are in an adverse position to the state;

2070 3. A regulation or statement that only
2071 establishes specific prices to be charged for particular goods or
2072 services sold by an agency;

2073 4. A regulation or statement concerning only
2074 the physical servicing, maintenance or care of agency owned or
2075 operated facilities or property;

2076 5. A regulation or statement relating only to
2077 the use of a particular facility or property owned, operated or
2078 maintained by the state or any of its subdivisions, if the
2079 substance of the regulation or statement is adequately indicated
2080 by means of signs or signals to persons who use the facility or
2081 property;

2082 6. A regulation or statement directly related
2083 only to inmates of a correctional or detention facility, students
2084 enrolled in an educational institution or patients admitted to a
2085 hospital, if adopted by that facility, institution or hospital;

2086 7. A form whose contents or substantive
2087 requirements are prescribed by rule or statute, and instructions
2088 for the execution or use of the form;

2089 8. An agency budget;

2090 9. A compact or agreement between an agency
2091 of this state and one or more agencies of another state or states;
2092 or

2093 10. An opinion of the Attorney General
2094 pursuant to Section 7-5-25, an opinion of the Ethics Commission
2095 pursuant to Section 25-4-17, or an Executive Order of the
2096 Governor.

2097 (j) "Rule-making" means the process for formulation and
2098 adoption of a rule.

2099 **SECTION 35.** Section 25-43-2.103, Mississippi Code of 1972,
2100 is amended as follows:

2101 25-43-2.103. **Declaratory opinions.** (1) Any person with a
2102 substantial interest in the subject matter may make a written
2103 request of an agency for a declaratory opinion as to the
2104 applicability to specified circumstances of a statute, rule or
2105 order within the primary jurisdiction of the agency. Such written
2106 request must clearly set forth the specific facts upon which an
2107 opinion is asked for and shall be limited to a single transaction
2108 or occurrence. An agency, through the agency head or its
2109 designee(s) by rule, shall issue a declaratory opinion in response
2110 to a written request for that opinion unless the agency determines
2111 that issuance of the opinion under the circumstances would be
2112 contrary to a rule adopted in accordance with subsection (2) of
2113 this section.

2114 (2) Each agency shall issue rules that provide for: (a) the
2115 form, contents and filing of written requests for declaratory
2116 opinions; (b) the procedural rights of persons in relation to the
2117 written requests; and (c) the disposition of the written requests.
2118 Those rules must describe the classes of circumstances in which
2119 the agency will not issue a declaratory opinion.

2120 (3) Within forty-five (45) days after receipt of a written
2121 request for a declaratory opinion, an agency, in writing, shall:

2122 (a) Issue an opinion declaring the applicability of the
2123 statute, rule or order in question to the specified circumstances;

2124 (b) Agree to issue a declaratory opinion by a specified
2125 time but no later than ninety (90) days after receipt of the
2126 written request; or

2127 (c) Decline to issue a declaratory opinion, stating the
2128 reasons for its action.

2129 (4) A copy of all opinions issued in response to a written
2130 request for a declaratory opinion must be mailed promptly to the
2131 requesting person.

2132 (5) (a) When any person receives a declaratory opinion from
2133 an agency and shall have stated all the facts to govern such
2134 opinion, the agency shall take no civil or criminal action against
2135 such person who, in good faith, follows the direction of such
2136 opinion and acts in accordance therewith unless a court of
2137 competent jurisdiction, after a full hearing, shall judicially
2138 declare that such opinion is manifestly wrong and without any
2139 substantial support. No declaratory opinion shall be given or
2140 considered if the opinion is requested after suit is filed or
2141 prosecution begun. Any declaratory opinion rendered pursuant to
2142 this chapter shall not be binding or effective for any third party
2143 or person other than the agency issuing the declaratory opinion
2144 and the person to whom the opinion is issued and shall not be used
2145 as precedent for any other transaction or occurrence beyond that
2146 set forth by the requesting person.

2147 (b) The authority of persons to request and receive
2148 agency declaratory opinions in no way affects the ability of any
2149 person authorized by Section 7-5-25 to request a legal opinion
2150 from the Attorney General.

2151 (c) Subject to any confidentiality provisions
2152 established by law, each agency shall make all declaratory
2153 opinions available for public inspection and copying and shall
2154 index them by name and subject, unless information contained

2155 within such opinions is confidential by statute or exempt from
2156 public disclosure pursuant to another provision of law.

2157 (6) Without in any way limiting a person's right to request
2158 and receive a declaratory opinion under this section, or an
2159 agency's duty to issue a declaratory opinion under this section,
2160 nothing contained in this section shall prohibit an agency from
2161 providing informal responses or advice, orally or in writing, to
2162 any inquiries or requests for information submitted to the agency.
2163 Informal responses shall not be considered a declaratory opinion
2164 under this section.

2165 **SECTION 36.** Sections 27-3-29, 27-7-71, 27-7-73, 27-9-47,
2166 27-13-43, 27-13-45, 27-19-337, 27-55-41, 27-55-549, 27-57-29,
2167 27-59-43, 27-59-317, 27-61-35, 27-65-45, 27-65-47, 27-65-49,
2168 27-67-23, 27-67-25, 27-67-27, 27-69-43 and 63-21-61, Mississippi
2169 Code of 1972, which provide for hearings and appeals from certain
2170 actions of the State Tax Commission, are repealed.

2171 **SECTION 37.** Nothing in this act shall affect or defeat any
2172 assessment, refund claim, request for waiver of a tax penalty or
2173 the suspension, revocation, surrender, seizure or denial of
2174 permit, tag or title or the administrative appeal or judicial
2175 appeal thereof where the initial date of said assessment, refund
2176 claim, tag penalty, denial, notice of the intent to suspend,
2177 notice of the intent to revoke, request for surrender or order for
2178 seizure is before the date on which this act becomes effective.
2179 The provisions of the laws relating to the administrative appeal
2180 or judicial review of such actions which were in effect prior to
2181 the effective date of this act are expressly continued in full
2182 force, effect and operation for the purpose of providing an
2183 administrative appeal and/or judicial review of any assessment,
2184 refund claim, request for waiver of a tag penalty or the
2185 suspension, revocation, surrender, seizure or denial of a permit,
2186 tag or title where the initial date of said assessment, refund
2187 claim, tag penalty, denial, notice of the intent to suspend,

2188 notice of the intent to revoke, request for surrender or order for
2189 seizure is before the date on which this act becomes effective.

2190 **SECTION 38.** Sections 1 through 10 of this act shall be
2191 codified as a separate chapter in Title 27, Mississippi Code of
2192 1972.

2193 **SECTION 39.** This act shall take effect and be in force from
2194 and after July 1, 2005.