

By: Senator(s) Little, Robertson, Gordon,
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To: Finance

SENATE BILL NO. 3084

1 AN ACT TO AMEND SECTION 27-69-13, MISSISSIPPI CODE OF 1972,
2 TO INCREASE THE EXCISE TAX ON CIGARETTES, TO PROVIDE THAT THERE
3 SHALL BE A DISCOUNT OF 1% ON THE ADDITIONAL FACE VALUE OF STAMPS
4 PURCHASED TO COMPLY WITH SUCH INCREASE AND TO REMOVE THE TAXATION
5 OF SNUFF AND OTHER TOBACCO PRODUCTS FROM THE SECTION OF LAW THAT
6 LEVIES THE EXCISE TAX ON DEALERS IN CIGARETTES; TO CREATE NEW
7 SECTION 27-69-13.1, MISSISSIPPI CODE OF 1972, TO LEVY THE EXCISE
8 TAX ON DEALERS IN SNUFF; TO CREATE NEW SECTION 27-69-13.2,
9 MISSISSIPPI CODE OF 1972, TO LEVY THE EXCISE TAX ON DEALERS IN
10 CIGARS, STOGIES, CHEWING TOBACCO, SMOKING TOBACCO AND ALL OTHER
11 TOBACCO PRODUCTS, EXCEPT CIGARETTES AND SNUFF; TO CREATE THE
12 MUNICIPAL SALES TAX DIVERSION FUND AND REQUIRE THAT MONEY IN THE
13 FUND BE DISTRIBUTED MONTHLY TO MUNICIPALITIES IN THE PROPORTION
14 THAT SALES TAX COLLECTIONS FOR GROCERIES DURING THE PRECEDING
15 MONTH IN EACH MUNICIPALITY BEAR TO THE TOTAL SALES TAX COLLECTIONS
16 FOR GROCERIES DURING THE PRECEDING MONTH IN ALL THE MUNICIPALITIES
17 OF THE STATE; TO AMEND SECTION 27-65-75, MISSISSIPPI CODE OF 1972,
18 TO REQUIRE THAT A PORTION OF THE SALES TAX REVENUE COLLECTED EACH
19 MONTH TO BE DEPOSITED IN THE MUNICIPAL SALES TAX DIVERSION FUND,
20 THE EDUCATION ENHANCEMENT FUND AND THE SCHOOL AD VALOREM TAX
21 REDUCTION FUND; TO AMEND SECTIONS 27-69-27 AND 27-69-31,
22 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO CREATE A NEW
23 SECTION 27-65-26, MISSISSIPPI CODE OF 1972, TO IMPOSE A SEPARATE
24 SALES TAX LEVY ON RETAIL SALES OF CERTAIN FOOD FOR HUMAN
25 CONSUMPTION AND TO REDUCE THE SALES TAX RATE ON SUCH FOOD; TO
26 AMEND SECTION 27-65-17, MISSISSIPPI CODE OF 1972, IN CONFORMITY
27 THERETO; TO IMPOSE A FEE ON NONSETTLING-MANUFACTURER CIGARETTES
28 AND TO PROVIDE THAT THE REVENUE VENUE DERIVED FROM THE FEE SHALL
29 BE DEPOSITED INTO THE STATE GENERAL FUND; TO REQUIRE MONTHLY
30 REPORTING OF THE NUMBER AND DENOMINATION OF STAMPS AFFIXED TO
31 PACKAGES OF NONSETTLING-MANUFACTURER CIGARETTES; TO REQUIRE
32 REGISTRATION OF NONSETTLING MANUFACTURERS WITH THE ATTORNEY
33 GENERAL; TO REQUIRE DEVELOPMENT, MAINTENANCE, AND PUBLICATION BY
34 THE ATTORNEY GENERAL OF A LIST OF NONSETTLING MANUFACTURERS THAT
35 HAVE CERTIFIED THEIR COMPLIANCE WITH THIS ACT; TO PROVIDE FOR
36 ENFORCEMENT OF THE REQUIREMENTS IMPOSED BY THIS ACT; TO PROHIBIT
37 THE TRANSPORT OF UNSTAMPED CIGARETTES ACROSS STATE LINES; TO
38 PROVIDE FOR REPORTS ON THE TRANSPORT OF STAMPED CIGARETTES ACROSS
39 STATE LINES; AND FOR RELATED PURPOSES.

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

41 **SECTION 1.** Section 27-69-13, Mississippi Code of 1972, is
42 amended as follows:

43 27-69-13. (1) There is * * * imposed, levied and assessed,
44 to be collected and paid as hereinafter provided in this chapter,
45 an excise tax on each person or dealer in cigarettes * * * or

46 substitutes therefor, upon the sale, use, consumption, handling or
47 distribution in the State of Mississippi, * * * at the rate
48 of * * * Four Cents (4¢) on each cigarette sold with a maximum
49 length of one hundred twenty (120) millimeters; any cigarette in
50 excess of this length shall be taxed as if it were two (2) or more
51 cigarettes. * * * However, if the federal tax rate on cigarettes
52 in effect on June 1, 1985, is reduced, then the rate as provided
53 in this section shall be increased by the amount of the federal
54 tax reduction. The tax increase shall take effect on the first
55 day of the month following the effective date of such reduction in
56 the federal tax rate.

57 * * *

58 (2) No stamp evidencing the tax * * * levied on cigarettes
59 by this section shall be of a denomination of less than One Cent
60 (1¢), and whenever the tax computed at the rates * * * prescribed
61 on cigarettes in this section is a specified amount, plus a
62 fractional part of One Cent (1¢), the package shall be stamped for
63 the next full cent. However, the additional face value of stamps
64 purchased to comply with taxes imposed by this section after June
65 1, 1985, and prior to July 1, 2006, shall be subject to a four
66 percent (4%) discount or compensation to dealers for their
67 services rather than the eight percent (8%) discount or
68 compensation allowed by Section 27-69-31, and there shall be a
69 discount of one percent (1%) on the additional face value of
70 stamps purchased to comply with taxes imposed by this section on
71 or after July 1, 2006.

72 (3) Every wholesaler shall purchase stamps as provided in
73 this chapter, and affix the stamps to all packages of cigarettes
74 handled by him as * * * provided in this chapter.

75 (4) The * * * tax levied by this section is levied upon the
76 sale, use, gift, possession or consumption of cigarettes or
77 substitutes therefor within the State of Mississippi, and the
78 impact of the tax levied by this section is * * * declared to be

79 on the vendee, user, consumer or possessor of tobacco in this
80 state. * * * When the tax is paid by any other person, the
81 payment shall be considered as an advance payment and shall
82 thereafter be added to the price of the tobacco and recovered from
83 the ultimate consumer or user.

84 **SECTION 2.** The following provision shall be codified as
85 Section 27-69-13.1, Mississippi Code of 1972:

86 27-69-13.1. (1) There is imposed, levied and assessed, to
87 be collected and paid as hereinafter provided in this chapter, an
88 excise tax on each person or dealer in snuff or substitutes
89 therefor, upon the sale, use, consumption, handling or
90 distribution in the State of Mississippi, at the rate of fifteen
91 percent (15%) of the manufacturer's list price.

92 (2) The tax levied by this section is levied upon the sale,
93 use, gift, possession or consumption of snuff or substitutes
94 therefor within the State of Mississippi, and the impact of the
95 tax levied by this section is declared to be on the vendee, user,
96 consumer or possessor of snuff in this state. When the tax is
97 paid by any other person, the payment shall be considered as an
98 advance payment and shall thereafter be added to the price of the
99 snuff and recovered from the ultimate consumer or user.

100 **SECTION 3.** The following provision shall be codified as
101 Section 27-69-13.2, Mississippi Code of 1972:

102 27-69-13.2. (1) There is imposed, levied and assessed, to
103 be collected and paid as hereinafter provided in this chapter, an
104 excise tax on each person or dealer in cigars, stogies, chewing
105 tobacco, smoking tobacco and all other tobacco products, except
106 cigarettes and snuff, upon the sale, use, consumption, handling or
107 distribution in the State of Mississippi, at the rate of fifteen
108 percent (15%) of the manufacturer's list price.

109 (2) The tax levied by this section is levied upon the sale,
110 use, gift, possession or consumption of cigars, stogies, chewing
111 tobacco, smoking tobacco and all other tobacco products, except

112 cigarettes or snuff, and the impact of the tax levied by this
113 section is declared to be on the vendee, user, consumer or
114 possessor of tobacco in this state. When the tax is paid by any
115 other person, such payment shall be considered as an advance
116 payment and shall thereafter be added to the price of the tobacco
117 and recovered from the ultimate consumer or user.

118 **SECTION 4.** (1) There is created in the State Treasury a
119 special fund known as the Municipal Sales Tax Diversion Fund which
120 shall be comprised of the money required to be deposited into the
121 fund under Section 27-65-75. Money in the fund shall be expended
122 by the State Tax Commission to make payments to municipalities as
123 required by this section. Unexpended amounts remaining in the
124 special fund at the end of a fiscal year shall not lapse into the
125 State General Fund, and any interest earned or investment earnings
126 on amounts in the special fund shall be deposited to the credit of
127 the special fund.

128 (2) On or before September 15, 2006, and each succeeding
129 month thereafter, the State Tax Commission shall distribute from
130 the special fund the amount required to be deposited in the
131 special fund during the preceding month under Section 27-65-75 to
132 each municipality in the state, in an amount equal to the
133 proportion that the sales tax collections from retail sales of
134 food taxed under Section 27-65-26 for the preceding month in each
135 municipality bear to the total sales tax collections from retail
136 sales of food taxed under Section 27-65-26 for the preceding month
137 in all the municipalities of the state.

138 **SECTION 5.** Section 27-65-75, Mississippi Code of 1972, is
139 amended as follows:

140 27-65-75. On or before the fifteenth day of each month, the
141 revenue collected under the provisions of this chapter during the
142 preceding month shall be paid and distributed as follows:

143 (1) On or before August 15, 1992, and each succeeding month
144 thereafter through July 15, 1993, eighteen percent (18%) of the

145 total sales tax revenue collected during the preceding month under
146 the provisions of this chapter, except that collected under the
147 provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on
148 business activities within a municipal corporation shall be
149 allocated for distribution to the municipality and paid to the
150 municipal corporation. On or before August 15, 1993, and each
151 succeeding month thereafter, eighteen and one-half percent
152 (18-1/2%) of the total sales tax revenue collected during the
153 preceding month under the provisions of this chapter, except that
154 collected under the provisions of Sections 27-65-15, 27-65-19(3)
155 and 27-65-21, on business activities within a municipal
156 corporation shall be allocated for distribution to the
157 municipality and paid to the municipal corporation.

158 A municipal corporation, for the purpose of distributing the
159 tax under this subsection, shall mean and include all incorporated
160 cities, towns and villages.

161 Monies allocated for distribution and credited to a municipal
162 corporation under this subsection may be pledged as security for a
163 loan if the distribution received by the municipal corporation is
164 otherwise authorized or required by law to be pledged as security
165 for such a loan.

166 In any county having a county seat that is not an
167 incorporated municipality, the distribution provided under this
168 subsection shall be made as though the county seat was an
169 incorporated municipality; however, the distribution to the
170 municipality shall be paid to the county treasury in which the
171 municipality is located, and those funds shall be used for road,
172 bridge and street construction or maintenance in the county.

173 (2) On or before September 15, 1987, and each succeeding
174 month thereafter, from the revenue collected under this chapter
175 during the preceding month, One Million One Hundred Twenty-five
176 Thousand Dollars (\$1,125,000.00) shall be allocated for
177 distribution to municipal corporations as defined under subsection

178 (1) of this section in the proportion that the number of gallons
179 of gasoline and diesel fuel sold by distributors to consumers and
180 retailers in each such municipality during the preceding fiscal
181 year bears to the total gallons of gasoline and diesel fuel sold
182 by distributors to consumers and retailers in municipalities
183 statewide during the preceding fiscal year. The State Tax
184 Commission shall require all distributors of gasoline and diesel
185 fuel to report to the commission monthly the total number of
186 gallons of gasoline and diesel fuel sold by them to consumers and
187 retailers in each municipality during the preceding month. The
188 State Tax Commission shall have the authority to promulgate such
189 rules and regulations as is necessary to determine the number of
190 gallons of gasoline and diesel fuel sold by distributors to
191 consumers and retailers in each municipality. In determining the
192 percentage allocation of funds under this subsection for the
193 fiscal year beginning July 1, 1987, and ending June 30, 1988, the
194 State Tax Commission may consider gallons of gasoline and diesel
195 fuel sold for a period of less than one (1) fiscal year. For the
196 purposes of this subsection, the term "fiscal year" means the
197 fiscal year beginning July 1 of a year.

198 (3) On or before September 15, 1987, and on or before the
199 fifteenth day of each succeeding month, until the date specified
200 in Section 65-39-35, the proceeds derived from contractors' taxes
201 levied under Section 27-65-21 on contracts for the construction or
202 reconstruction of highways designated under the highway program
203 created under Section 65-3-97 shall, except as otherwise provided
204 in Section 31-17-127, be deposited into the State Treasury to the
205 credit of the State Highway Fund to be used to fund that highway
206 program. The Mississippi Department of Transportation shall
207 provide to the State Tax Commission such information as is
208 necessary to determine the amount of proceeds to be distributed
209 under this subsection.

210 (4) On or before August 15, 1994, and on or before the
211 fifteenth day of each succeeding month through July 15, 1999, from
212 the proceeds of gasoline, diesel fuel or kerosene taxes as
213 provided in Section 27-5-101(a)(ii)1, Four Million Dollars
214 (\$4,000,000.00) shall be deposited in the State Treasury to the
215 credit of a special fund designated as the "State Aid Road Fund,"
216 created by Section 65-9-17. On or before August 15, 1999, and on
217 or before the fifteenth day of each succeeding month, from the
218 total amount of the proceeds of gasoline, diesel fuel or kerosene
219 taxes apportioned by Section 27-5-101(a)(ii)1, Four Million
220 Dollars (\$4,000,000.00) or an amount equal to twenty-three and
221 one-fourth percent (23-1/4%) of those funds, whichever is the
222 greater amount, shall be deposited in the State Treasury to the
223 credit of the "State Aid Road Fund," created by Section 65-9-17.
224 Those funds shall be pledged to pay the principal of and interest
225 on state aid road bonds heretofore issued under Sections 19-9-51
226 through 19-9-77, in lieu of and in substitution for the funds
227 previously allocated to counties under this section. Those funds
228 may not be pledged for the payment of any state aid road bonds
229 issued after April 1, 1981; however, this prohibition against the
230 pledging of any such funds for the payment of bonds shall not
231 apply to any bonds for which intent to issue those bonds has been
232 published, for the first time, as provided by law before March 29,
233 1981. From the amount of taxes paid into the special fund under
234 this subsection and subsection (9) of this section, there shall be
235 first deducted and paid the amount necessary to pay the expenses
236 of the Office of State Aid Road Construction, as authorized by the
237 Legislature for all other general and special fund agencies. The
238 remainder of the fund shall be allocated monthly to the several
239 counties in accordance with the following formula:

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

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

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

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

253 The amount of funds allocated to any county under this
254 subsection for any fiscal year after fiscal year 1994 shall not be
255 less than the amount allocated to the county for fiscal year 1994.

256 Any reference in the general laws of this state or the
257 Mississippi Code of 1972 to Section 27-5-105 shall mean and be
258 construed to refer and apply to subsection (4) of Section
259 27-65-75.

260 (5) One Million Six Hundred Sixty-six Thousand Six Hundred
261 Sixty-six Dollars (\$1,666,666.00) each month shall be paid into
262 the special fund known as the "State Public School Building Fund"
263 created and existing under the provisions of Sections 37-47-1
264 through 37-47-67. Those payments into that fund are to be made on
265 the last day of each succeeding month hereafter.

266 (6) An amount each month beginning August 15, 1983, through
267 November 15, 1986, as specified in Section 6 of Chapter 542, Laws
268 of 1983, shall be paid into the special fund known as the
269 Correctional Facilities Construction Fund created in Section 6 of
270 Chapter 542, Laws of 1983.

271 (7) On or before August 15, 1992, and each succeeding month
272 thereafter through July 15, 2000, two and two hundred sixty-six
273 one-thousandths percent (2.266%) of the total sales tax revenue
274 collected during the preceding month under the provisions of this

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

293 (8) On or before August 15, 1992, and each succeeding month
294 thereafter, nine and seventy-three one-thousandths percent
295 (9.073%) of the total sales tax revenue collected during the
296 preceding month under the provisions of this chapter, except that
297 collected under the provisions of Section 27-65-17(2), shall be
298 deposited into the Education Enhancement Fund created under
299 Section 37-61-33.

300 (9) On or before August 15, 1994, and each succeeding month
301 thereafter, from the revenue collected under this chapter during
302 the preceding month, Two Hundred Fifty Thousand Dollars
303 (\$250,000.00) shall be paid into the State Aid Road Fund.

304 (10) On or before August 15, 1994, and each succeeding month
305 thereafter through August 15, 1995, from the revenue collected
306 under this chapter during the preceding month, Two Million Dollars

307 (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad
308 Valorem Tax Reduction Fund established in Section 27-51-105.

309 (11) Notwithstanding any other provision of this section to
310 the contrary, on or before February 15, 1995, and each succeeding
311 month thereafter, the sales tax revenue collected during the
312 preceding month under the provisions of Section 27-65-17(2) and
313 the corresponding levy in Section 27-65-23 on the rental or lease
314 of private carriers of passengers and light carriers of property
315 as defined in Section 27-51-101 shall be deposited, without
316 diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund
317 established in Section 27-51-105.

318 (12) Notwithstanding any other provision of this section to
319 the contrary, on or before August 15, 1995, and each succeeding
320 month thereafter, the sales tax revenue collected during the
321 preceding month under the provisions of Section 27-65-17(1) on
322 retail sales of private carriers of passengers and light carriers
323 of property, as defined in Section 27-51-101 and the corresponding
324 levy in Section 27-65-23 on the rental or lease of these vehicles,
325 shall be deposited, after diversion, into the Motor Vehicle Ad
326 Valorem Tax Reduction Fund established in Section 27-51-105.

327 (13) On or before July 15, 1994, and on or before the
328 fifteenth day of each succeeding month thereafter, that portion of
329 the avails of the tax imposed in Section 27-65-22 that is derived
330 from activities held on the Mississippi state fairgrounds complex,
331 shall be paid into a special fund that is created in the State
332 Treasury and shall be expended upon legislative appropriation
333 solely to defray the costs of repairs and renovation at the Trade
334 Mart and Coliseum.

335 (14) On or before August 15, 1998, and each succeeding month
336 thereafter through July 15, 2005, that portion of the avails of
337 the tax imposed in Section 27-65-23 that is derived from sales by
338 cotton compresses or cotton warehouses and that would otherwise be
339 paid into the General Fund, shall be deposited in an amount not to

340 exceed Two Million Dollars (\$2,000,000.00) into the special fund
341 created under Section 69-37-39.

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

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

356 (17) Notwithstanding any other provision of this section to
357 the contrary, on or before April 15, 2002, and each succeeding
358 month thereafter, the sales tax revenue collected during the
359 preceding month under Section 27-65-23 on sales of parking
360 services of parking garages and lots at airports shall be
361 deposited, without diversion, into the special fund created under
362 Section 27-5-101(d).

363 (18) On or before August 15, 2007, and each succeeding month
364 thereafter through July 15, 2008, from the sales tax revenue
365 collected during the preceding month under the provisions of this
366 chapter, Two Million Five Hundred Thousand Dollars (\$2,500,000.00)
367 shall be deposited into the Special Funds Transfer Fund created in
368 Section 4 of Chapter 556, Laws of 2003.

369 (19) (a) On or before August 15, 2005, and each succeeding
370 month thereafter, the sales tax revenue collected during the
371 preceding month under the provisions of this chapter on the gross
372 proceeds of sales of a business enterprise located within a

373 redevelopment project area under the provisions of Sections
374 57-91-1 through 57-91-11, and the revenue collected on the gross
375 proceeds of sales from sales made to a business enterprise located
376 in a redevelopment project area under the provisions of Sections
377 57-91-1 through 57-91-11 (provided that such sales made to a
378 business enterprise are made on the premises of the business
379 enterprise), shall, except as otherwise provided in this
380 subsection (19), be deposited, after all diversions, into the
381 Redevelopment Project Incentive Fund as created in Section
382 57-91-9.

383 (b) For a municipality participating in the Economic
384 Redevelopment Act created in Sections 57-91-1 through 57-91-11,
385 the diversion provided for in subsection (1) of this section
386 attributable to the gross proceeds of sales of a business
387 enterprise located within a redevelopment project area under the
388 provisions of Sections 57-91-1 through 57-91-11, and attributable
389 to the gross proceeds of sales from sales made to a business
390 enterprise located in a redevelopment project area under the
391 provisions of Sections 57-91-1 through 57-91-11 (provided that
392 such sales made to a business enterprise are made on the premises
393 of the business enterprise), shall be deposited into the
394 Redevelopment Project Incentive Fund as created in Section
395 57-91-9, as follows:

396 (i) For the first six (6) years in which payments
397 are made to a developer from the Redevelopment Project Incentive
398 Fund, one hundred percent (100%) of the diversion shall be
399 deposited into the fund;

400 (ii) For the seventh year in which such payments
401 are made to a developer from the Redevelopment Project Incentive
402 Fund, eighty percent (80%) of the diversion shall be deposited
403 into the fund;

404 (iii) For the eighth year in which such payments
405 are made to a developer from the Redevelopment Project Incentive

406 Fund, seventy percent (70%) of the diversion shall be deposited
407 into the fund;

408 (iv) For the ninth year in which such payments are
409 made to a developer from the Redevelopment Project Incentive Fund,
410 sixty percent (60%) of the diversion shall be deposited into the
411 fund; and

412 (v) For the tenth year in which such payments are
413 made to a developer from the Redevelopment Project Incentive Fund,
414 fifty percent (50%) of the funds shall be deposited into the fund.

415 (20) On or before September 15, 2006, and each succeeding
416 month thereafter, the following amount of sales tax revenue
417 collected during the preceding month under the provisions of this
418 chapter shall be deposited, after all diversions, into the
419 following funds:

420 (a) Two Million Four Hundred Thousand Dollars
421 (\$2,400,000.00) into the Municipal Sales Tax Diversion Fund
422 created under Section 4 of Senate Bill No. 3084, 2006 Regular
423 Session.

424 (b) One Million Three Hundred Five Thousand Dollars
425 (\$1,305,000.00) into the Education Enhancement Fund created under
426 Section 37-61-33.

427 (c) Three Hundred Twenty-six Thousand Dollars
428 (\$326,000.00) into the School Ad Valorem Tax Reduction Fund
429 created under Section 37-61-35.

430 (21) The remainder of the amounts collected under the
431 provisions of this chapter shall be paid into the State Treasury
432 to the credit of the General Fund.

433 (22) It shall be the duty of the municipal officials of any
434 municipality that expands its limits, or of any community that
435 incorporates as a municipality, to notify the commissioner of that
436 action thirty (30) days before the effective date. Failure to so
437 notify the commissioner shall cause the municipality to forfeit
438 the revenue that it would have been entitled to receive during

439 this period of time when the commissioner had no knowledge of the
440 action. If any funds have been erroneously disbursed to any
441 municipality or any overpayment of tax is recovered by the
442 taxpayer, the commissioner may make correction and adjust the
443 error or overpayment with the municipality by withholding the
444 necessary funds from any later payment to be made to the
445 municipality.

446 **SECTION 6.** Section 27-69-27, Mississippi Code of 1972, is
447 amended as follows:

448 27-69-27. The payment of the tax imposed by this chapter
449 shall be evidenced by affixing stamps to each individual package
450 of cigarettes usually sold to consumers, as distinguished from
451 cartons or larger units which are composed of a number of
452 individual packages.

453 The stamp shall be affixed within seventy-two (72) hours
454 after the receipt of the cigarettes by the wholesaler, and within
455 forty-eight (48) hours after receipt of the cigarettes by the
456 retailer; provided, that in the case a dealer conducts a wholesale
457 and retail business at one (1) place of business, stamps shall be
458 affixed within forty-eight (48) hours after receipt of the
459 cigarettes. The stamp must be so securely affixed as to require
460 the continued application of water or of steam to remove it, or so
461 that it cannot be otherwise removed without destruction or
462 mutilation.

463 The excise tax imposed on cigars, smoking tobacco, chewing
464 tobacco, snuff and all other tobacco products except cigarettes
465 shall be computed by the application of the excise tax rate to the
466 manufacturer's list price on all purchases of such tobacco. The
467 excise tax shall be due and payable on or before the fifteenth day
468 of the month next succeeding the month in which the tax accrues.
469 The tax shall be filed with the commissioner on forms prescribed
470 by the commissioner.

471 Provided, however, manufacturers or other wholesale
472 distributors of tobacco, which are subject to the excise taxes
473 imposed by Sections 27-69-13, 27-69-13.1 and 27-69-13.2 * * * for
474 the privilege of selling or using such tobaccos within this state,
475 who maintain "terminals" or warehouses in which such tobaccos are
476 stored, and who sell only to licensed wholesale dealers within the
477 state who are qualified to purchase and affix the stamps required,
478 may maintain such "spot stocks," intended only for such sales,
479 without affixing the stamps or filing returns and paying the tax.

480 Any person desiring to maintain such "terminal" or warehouse,
481 shall make application to the commissioner and obtain a permit to
482 maintain such stocks without affixing stamps thereto, for sale
483 exclusively to out-of-state purchasers, or licensed wholesale
484 dealers within this state, and the commissioner is hereby
485 authorized to grant such permit upon the execution and filing with
486 the commissioner, by the applicant, a bond with surety companies,
487 authorized to do business in Mississippi, as surety thereon, and
488 conditioned for the strict compliance by the applicant, with the
489 following conditions under which said privilege may be granted.

490 The person maintaining such stock of untaxed tobacco shall
491 supply to the commissioner monthly, or at such times as the
492 commissioner may require, complete invoices of all tobaccos
493 received, and shall also supply correct invoices of all tobaccos
494 removed from such "terminal" or warehouse, said invoices to
495 contain the correct name and address of all persons to whom such
496 tobacco shall be delivered or consigned, whether within or without
497 the State of Mississippi.

498 The penalty of such bond shall be determined by the
499 commissioner, in an amount sufficient to protect the State of
500 Mississippi from any loss of revenue which might occur by reason
501 of the failure of principal to strictly adhere to the requirement
502 that no tobacco would be sold from such stock within the State of
503 Mississippi, except to licensed wholesale dealers.

504 **SECTION 7.** Section 27-69-31, Mississippi Code of 1972, is
505 amended as follows:

506 27-69-31. Dealers subject to the provisions of this chapter
507 shall be allowed, as compensation for their services in affixing
508 the stamps * * * required by this chapter, a sum equal to eight
509 percent (8%) of the face value of the stamps purchased by them,
510 except as otherwise provided in Section 27-69-13(2); however, the
511 commission shall allow no discount on the purchase of stamps by
512 wholesalers of an aggregate amount of less than One Hundred
513 Dollars (\$100.00), and by retailers of an aggregate amount of less
514 than Fifty Dollars (\$50.00) in any one (1) order.

515 * * * The commissioner may, in his discretion, either
516 reduce the compensation allowed, or disallow any compensation for
517 the affixing of stamps, for failure of the dealer to comply with
518 any provisions of the law or rules and regulations promulgated by
519 the commissioner.

520 **SECTION 8.** The following provision shall be codified as
521 Section 27-65-26, Mississippi Code of 1972:

522 27-65-26. From and after July 1, 2006, retail sales of food
523 for human consumption not purchased with food stamps issued by the
524 United States Department of Agriculture, or other federal agency,
525 but which would be exempt under paragraph (o) of Section 27-65-111
526 from the taxes imposed by this chapter if the food items were
527 purchased with food stamps, shall be taxed at the rate of three
528 and one-half percent (3-1/2%).

529 **SECTION 9.** Section 27-65-17, Mississippi Code of 1972, is
530 amended as follows:

531 27-65-17. (1) (a) Except as otherwise provided in this
532 section, upon every person engaging or continuing within this
533 state in the business of selling any tangible personal property
534 whatsoever there is hereby levied, assessed and shall be collected
535 a tax equal to seven percent (7%) of the gross proceeds of the
536 retail sales of the business.

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

540 (c) Retail sales of farm implements sold to farmers and
541 used directly in the production of poultry, ratite, domesticated
542 fish as defined in Section 69-7-501, livestock, livestock
543 products, agricultural crops or ornamental plant crops or used for
544 other agricultural purposes shall be taxed at the rate of three
545 percent (3%) when used on the farm. The three percent (3%) rate
546 shall also apply to all equipment used in logging, pulpwood
547 operations or tree farming which is either:

548 (i) Self-propelled, or

549 (ii) Mounted so that it is permanently attached to
550 other equipment which is self-propelled or permanently attached to
551 other equipment drawn by a vehicle which is self-propelled.

552 (d) Except as otherwise provided in subsection (3) of
553 this section, retail sales of aircraft, automobiles, trucks,
554 truck-tractors, semitrailers and mobile homes shall be taxed at
555 the rate of three percent (3%).

556 (e) Sales of manufacturing machinery or manufacturing
557 machine parts when made to a manufacturer or custom processor for
558 plant use only when the machinery and machine parts will be used
559 exclusively and directly within this state in manufacturing a
560 commodity for sale, rental or in processing for a fee shall be
561 taxed at the rate of one and one-half percent (1-1/2%).

562 (f) Sales of machinery and machine parts when made to a
563 technology intensive enterprise for plant use only when the
564 machinery and machine parts will be used exclusively and directly
565 within this state for industrial purposes, including, but not
566 limited to, manufacturing or research and development activities,
567 shall be taxed at the rate of one and one-half percent (1-1/2%).
568 In order to be considered a technology intensive enterprise for
569 purposes of this paragraph:

570 (i) The enterprise shall meet minimum criteria
571 established by the Mississippi Development Authority;

572 (ii) The enterprise shall employ at least ten (10)
573 persons in full-time jobs;

574 (iii) At least ten percent (10%) of the workforce
575 in the facility operated by the enterprise shall be scientists,
576 engineers or computer specialists;

577 (iv) The enterprise shall manufacture plastics,
578 chemicals, automobiles, aircraft, computers or electronics; or
579 shall be a research and development facility, a computer design or
580 related facility, or a software publishing facility or other
581 technology intensive facility or enterprise as determined by the
582 Mississippi Development Authority;

583 (v) The average wage of all workers employed by
584 the enterprise at the facility shall be at least one hundred fifty
585 percent (150%) of the state average annual wage; and

586 (vi) The enterprise must provide a basic health
587 care plan to all employees at the facility.

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

592 (h) Sales of tangible personal property to electric
593 power associations for use in the ordinary and necessary operation
594 of their generating or distribution systems shall be taxed at the
595 rate of one percent (1%).

596 (i) Wholesale sales of beer shall be taxed at the rate
597 of seven percent (7%), and the retailer shall file a return and
598 compute the retail tax on retail sales but may take credit for the
599 amount of the tax paid to the wholesaler on said return covering
600 the subsequent sales of same property, provided adequate invoices
601 and records are maintained to substantiate the credit.

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

607 (k) Sales of equipment used or designed for the purpose
608 of assisting disabled persons, such as wheelchair equipment and
609 lifts, that is mounted or attached to or installed on a private
610 carrier of passengers or light carrier of property, as defined in
611 Section 27-51-101, at the time when the private carrier of
612 passengers or light carrier of property is sold shall be taxed at
613 the same rate as the sale of such vehicles under this section.

614 (1) From and after July 1, 2006, retail sales of food
615 for human consumption not purchased with food stamps issued by the
616 United States Department of Agriculture, or other federal agency,
617 but which would be exempt under paragraph (o) of Section 27-65-111
618 from the taxes imposed by this chapter if the food items were
619 purchased with food stamps, shall be taxed as provided for in
620 Section 27-65-26.

621 (2) From and after January 1, 1995, retail sales of private
622 carriers of passengers and light carriers of property, as defined
623 in Section 27-51-101, shall be taxed an additional two percent
624 (2%).

625 (3) In lieu of the tax levied in subsection (1) of this
626 section, there is levied on retail sales of truck-tractors and
627 semitrailers used in interstate commerce and registered under the
628 International Registration Plan (IRP) or any similar reciprocity
629 agreement or compact relating to the proportional registration of
630 commercial vehicles entered into as provided for in Section
631 27-19-143, a tax at the rate of three percent (3%) of the portion
632 of the sale that is attributable to the usage of such
633 truck-tractor or semitrailer in Mississippi. The portion of the
634 retail sale that is attributable to the usage of such

635 truck-tractor or semitrailer in Mississippi is the retail sales
636 price of the truck-tractor or semitrailer multiplied by the
637 percentage of the total miles traveled by the vehicle that are
638 traveled in Mississippi. The tax levied pursuant to this
639 subsection (3) shall be collected by the State Tax Commission from
640 the purchaser of such truck-tractor or semitrailer at the time of
641 registration of such truck-tractor or semitrailer.

642 (4) A manufacturer selling at retail in this state shall be
643 required to make returns of the gross proceeds of such sales and
644 pay the tax imposed in this section.

645 (5) Any person exercising any privilege taxable under
646 Section 27-65-15 and selling his natural resource products at
647 wholesale or to exempt persons shall pay the tax levied by said
648 section in lieu of the tax levied by this section.

649 **SECTION 10.** The Legislature declares that the following are
650 the purposes of Sections 10 through 18 of this act:

651 (a) To recover health care costs to the state imposed
652 by nonsettling manufacturers;

653 (b) To prevent nonsettling manufacturers from
654 undermining the state's policy of reducing underage smoking by
655 offering their cigarettes for sale substantially below the price
656 of cigarettes of other manufacturers;

657 (c) To protect funding, which is reduced as a result of
658 the growth of nonsettling-manufacturer cigarette sales, for
659 programs funded in whole or in part by payments to the state under
660 the tobacco settlements referred to in Section 11(e) of this act,
661 and to recoup settlement-payment revenue lost to the state as a
662 result of nonsettling-manufacturer cigarettes sales; and

663 (d) To fund such other purposes as the Legislature
664 shall determine.

665 **SECTION 11.** As used in Sections 10 through 18 of this act,
666 the following terms shall have the meaning ascribed to them
667 herein:

668 (a) "Commissioner" means the Chairman of the State Tax
669 Commission of the State of Mississippi, and his authorized agents
670 and employees.

671 (b) "Consumer Price Index" means the Consumer Price
672 Index for All Urban Consumers as published by the Bureau of Labor
673 Statistics of the United States Department of Labor.

674 (c) "Manufacturer" includes, but is not limited to, an
675 entity that is the first importer into the United States of
676 cigarettes manufactured abroad.

677 (d) "Master Settlement Agreement" means the settlement
678 agreement entered into on November 23, 1998, by various states and
679 leading cigarette manufacturers.

680 (e) "Nonsettling manufacturer" means any tobacco
681 product manufacturer that has not entered into the settlement
682 agreements, as amended, in the case of Mike Moore, Attorney
683 General ex rel. State of Mississippi v. The American Tobacco
684 Company et al. (Chancery Court of Jackson County, Mississippi,
685 Cause No. 94-1429).

686 (f) "Nonsettling-manufacturer cigarettes" means
687 cigarettes manufactured, fabricated, assembled or imported by a
688 nonsettling manufacturer.

689 (g) "This act" means Sections 10 through 18 of this
690 act.

691 **SECTION 12.** (1) There is hereby imposed, levied and
692 assessed a fee for the sale, use, consumption, handling or
693 distribution, in the State of Mississippi, of
694 nonsettling-manufacturer cigarettes to which a stamp is required
695 to be affixed by law. The rate of the fee shall be Two and
696 Three-twentieths Cents (2-3/20¢) on each cigarette, to be adjusted
697 upward annually each January 1 by the greater of three percent
698 (3%) or the Consumer Price Index applied each year on the previous
699 year, beginning with the year of enactment of this act. The fee
700 is in addition to all other privileges, licenses, fees, or taxes

701 now imposed by law in this state. The commissioner shall collect
702 the fee each month directly from each nonsettling manufacturer
703 based on information received under Section 14 of this act or
704 other information available to the commissioner. Except as
705 otherwise provided in this act, the fee shall be imposed,
706 collected, paid, administered, and enforced in the same manner as
707 the tax on cigarettes assessed by Section 27-69-13.

708 (2) The revenue derived from the fee imposed under this
709 section shall be deposited into the State General Fund.

710 **SECTION 13.** A nonsettling manufacturer whose cigarettes are
711 being offered for sale in this state on July 1, 2006, shall
712 provide to the commissioner the information described in Sections
713 15 and 16 of this act, and pay the fee imposed by Section 12 of
714 this act by not later than July 31, 2006. If cigarettes of a
715 nonsettling manufacturer are not being offered for sale in this
716 state on July 1, 2006, then the nonsettling manufacturer, before
717 its cigarettes may begin to be offered for sale in this state,
718 shall prepay the fee imposed by Section 12 of this act for the
719 number of cigarettes of the nonsettling manufacturer that the
720 commissioner reasonably projects will be sold in the first
721 calendar month in which cigarettes of the nonsettling manufacturer
722 are sold in this state. The prepayment amount shall be determined
723 by multiplying Two and One-half Cents (2-1/2¢) times the number of
724 cigarettes that the commissioner reasonably projects that the
725 nonsettling manufacturer will sell in this state in that first
726 calendar month, or Fifty Thousand Dollars (\$50,000.00), whichever
727 is more. The commissioner may require a nonsettling manufacturer
728 to provide any information reasonably necessary to determine the
729 fee payment amount and, in the case of prepayment, shall establish
730 regulations providing for reimbursement to nonsettling
731 manufacturers if actual sales are less than sales as projected by
732 the commissioner and for additional payment by nonsettling

733 manufacturers if actual sales are greater than sales as projected
734 by the commissioner.

735 **SECTION 14.** Any manufacturer, distributor, or wholesaler of
736 cigarettes required by Section 27-69-35 to file a monthly report
737 shall state, in addition to the information required to be
738 reported under Section 27-69-35, the number and denominations of
739 stamps affixed to individual packages of nonsettling-manufacturer
740 cigarettes, by manufacturer and brand family, sold for each place
741 of business in the month preceding the month in which the report
742 is made, as well as any other information determined by the
743 commissioner to be necessary or appropriate for determining the
744 fee due under Section 12 of this act, or for enforcing any of the
745 provisions of this act. This reporting requirement shall be
746 enforced in the same manner as the monthly reporting requirement
747 imposed by Section 27-69-35.

748 **SECTION 15.** Before its cigarettes may begin to be offered
749 for sale in this state, or, if its cigarettes are being offered
750 for sale in this state on July 1, 2006, by not later than July 31,
751 2006, a nonsettling manufacturer shall provide to the Attorney
752 General, on a form prescribed by the Attorney General, the
753 following information:

754 (a) The complete name, address and telephone number of
755 the nonsettling manufacturer;

756 (b) The date that cigarettes of the nonsettling
757 manufacturer began or will begin to be offered for sale in this
758 state;

759 (c) The names of the brand families of cigarettes of
760 the nonsettling manufacturer that are being or will be offered for
761 sale in this state;

762 (d) A statement of the nonsettling manufacturer's
763 intention to comply with the obligations imposed by this section;

764 and

765 (e) The name, address, telephone number and signature
766 of an officer of the nonsettling manufacturer attesting to all of
767 the information described in this section.

768 The Attorney General shall make information provided pursuant
769 to this section available to the commissioner.

770 **SECTION 16.** Each nonsettling manufacturer subject to the fee
771 imposed by Section 12 of this act shall certify to the Attorney
772 General on the first day of each month that it is in compliance
773 with this act and that it has paid in full the fee imposed by
774 Section 12 of this act. The Attorney General shall develop,
775 maintain, and publish on its Internet web site a directory listing
776 all nonsettling manufacturers that have provided current, accurate
777 and complete certifications. The Attorney General shall provide a
778 copy of the list to any person upon request.

779 **SECTION 17.** Cigarettes of a nonsettling manufacturer that
780 has not complied with this act, including payment in full of the
781 fee imposed by Section 12 of this act, shall be treated as
782 cigarettes for which the tax assessed by Section 27-69-13 has not
783 been paid, and a nonsettling manufacturer that has not complied
784 with this act shall be subject to any and all of the penalties
785 imposed for violations of Chapter 69, Title 27, Mississippi Code
786 of 1972. A person shall not affix to any package of
787 nonsettling-manufacturer cigarettes the stamp required under
788 Sections 27-69-13 and 27-69-27 after receiving notice from the
789 commissioner, which the commissioner shall provide, that the
790 nonsettling manufacturer of those cigarettes has not paid in full
791 the fee imposed by Section 12 of this act or if the nonsettling
792 manufacturer does not appear on the Attorney General's directory
793 described in Section 16 of this act.

794 **SECTION 18.** (1) A person may not transport or cause to be
795 transported from this state cigarettes for sale in another state
796 without first affixing to the cigarettes the stamp required by the
797 state in which the cigarettes are to be sold or paying any other

798 excise tax on the cigarettes imposed by the state in which the
799 cigarettes are to be sold.

800 (2) A person may not affix to cigarettes the stamp required
801 by another state or pay any other excise tax on the cigarettes
802 imposed by another state if the other state prohibits stamps from
803 being affixed to the cigarettes, prohibits the payment of any
804 other excise tax on the cigarettes, or prohibits the sale of the
805 cigarettes.

806 (3) On or before the fifteenth day of each month, a person
807 who transports or causes to be transported from this state
808 cigarettes for sale in another state shall submit to the
809 commissioner, on forms prescribed by the commissioner, a report
810 identifying the quantity and brand family of each brand of the
811 cigarettes transported or caused to be transported in the
812 preceding calendar month, and the correct name and address of each
813 recipient of the cigarettes.

814 (4) For purposes of this section, "person" means an
815 individual, partnership, committee, association, corporation or
816 any other organization or group of persons. Person does not
817 include any common or contract carrier, or public warehouse that
818 is not owned, in whole or in part, directly or indirectly by such
819 person.

820 **SECTION 19.** This act shall take effect and be in force from
821 and after July 1, 2006.