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To: Finance

SENATE BILL NO. 3098

1 AN ACT TO AMEND SECTION 27-69-13, MISSISSIPPI CODE OF 1972,
2 TO INCREASE THE EXCISE TAX ON CIGARETTES; TO AMEND SECTION
3 27-65-75, MISSISSIPPI CODE OF 1972, TO INCREASE THE PERCENTAGE OF
4 SALES TAX COLLECTED ON RETAIL SALES OF SUCH FOOD WITHIN
5 MUNICIPALITIES THAT IS DISTRIBUTED TO MUNICIPALITIES, AND TO
6 REQUIRE A PORTION OF THE MONTHLY TOBACCO TAX REVENUE TO BE
7 DEPOSITED IN THE EDUCATION ENHANCEMENT FUND AND THE SCHOOL AD
8 VALOREM TAX REDUCTION FUND; TO AMEND SECTION 27-69-31, MISSISSIPPI
9 CODE OF 1972, TO PROVIDE FOR A DISCOUNT ON THE ADDITIONAL FACE
10 VALUE OF STAMPS PURCHASED TO COMPLY WITH CERTAIN CIGARETTE EXCISE
11 TAX INCREASES; TO CREATE A NEW SECTION 27-65-26, MISSISSIPPI CODE
12 OF 1972, TO IMPOSE A SEPARATE SALES TAX LEVY ON RETAIL SALES OF
13 CERTAIN FOOD FOR HUMAN CONSUMPTION AND TO REDUCE THE SALES TAX
14 RATE ON SUCH FOOD; TO AMEND SECTION 27-65-17, MISSISSIPPI CODE OF
15 1972, IN CONFORMITY THERETO; TO IMPOSE A FEE ON
16 NONSETTLING-MANUFACTURER CIGARETTES; TO REQUIRE MONTHLY REPORTING
17 OF THE NUMBER AND DENOMINATION OF STAMPS AFFIXED TO PACKAGES OF
18 NONSETTLING-MANUFACTURER CIGARETTES, THE NUMBER OF INDIVIDUAL
19 PACKAGES OF NONSETTLING-MANUFACTURER CIGARETTES SOLD OR PURCHASED
20 IN THIS STATE OR OTHERWISE DISTRIBUTED IN THIS STATE FOR SALE IN
21 THE UNITED STATES AND ANY OTHER INFORMATION THE STATE TAX
22 COMMISSION CONSIDERS NECESSARY OR APPROPRIATE TO DETERMINE THE
23 AMOUNT OF THE FEE IMPOSED BY THIS ACT OR TO ENFORCE THIS ACT; TO
24 REQUIRE REGISTRATION OF NONSETTLING MANUFACTURERS WITH THE
25 ATTORNEY GENERAL; TO REQUIRE DEVELOPMENT, MAINTENANCE AND
26 PUBLICATION BY THE ATTORNEY GENERAL OF A LIST OF NONSETTLING
27 MANUFACTURERS THAT HAVE CERTIFIED THEIR COMPLIANCE WITH THIS ACT;
28 TO PROVIDE FOR ENFORCEMENT OF THE REQUIREMENTS IMPOSED BY THIS
29 ACT; TO GRANT PROTECTIONS FROM CIVIL LIABILITY TO NONSETTLING
30 MANUFACTURERS THAT COMPLY WITH THE PROVISIONS OF THIS ACT; AND FOR
31 RELATED PURPOSES.

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

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

35 **[Through June 30, 2008, this section shall read as follows:]**

36 27-69-13. (1) There is hereby imposed, levied and assessed,
37 to be collected and paid as hereinafter provided in this chapter,
38 an excise tax on each person or dealer in cigarettes, cigars,
39 stogies, snuff, chewing tobacco, and smoking tobacco, or
40 substitutes therefor, upon the sale, use, consumption, handling or
41 distribution in the State of Mississippi, as follows:

42 (a) On cigarettes, the rate of tax shall be Four Cents
43 (4¢) on each cigarette sold with a maximum length of one hundred
44 twenty (120) millimeters; any cigarette in excess of this length
45 shall be taxed as if it were two (2) or more cigarettes.
46 Provided, however, if the federal tax rate on cigarettes in effect
47 June 1, 1985, is reduced, then the rate as provided herein shall
48 be increased by the amount of the federal tax reduction. Such tax
49 increase shall take effect on the first day of the month following
50 the effective date of such reduction in the federal tax rate.

51 (b) On cigars, cheroots, stogies, snuff, chewing and
52 smoking tobacco and all other tobacco products except cigarettes,
53 the rate of tax shall be fifteen percent (15%) of the
54 manufacturer's list price.

55 (2) No stamp evidencing the tax * * * levied on cigarettes
56 by this section shall be of a denomination of less than One Cent
57 (1¢), and whenever the tax computed at the rates * * * prescribed
58 on cigarettes in this section is a specified amount, plus a
59 fractional part of One Cent (1¢), the package shall be stamped for
60 the next full cent. * * *

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

64 (4) The * * * tax levied by this section is levied upon the
65 sale, use, gift, possession or consumption of tobacco within the
66 State of Mississippi, and the impact of the tax levied by this
67 section is * * * declared to be on the vendee, user, consumer or
68 possessor of tobacco in this state. * * * When the tax is paid by
69 any other person, the payment shall be considered as an advance
70 payment and shall thereafter be added to the price of the tobacco
71 and recovered from the ultimate consumer or user.

72 **[From and after July 1, 2008, this section shall read as**
73 **follows:]**

74 27-69-13. (1) There is hereby imposed, levied and assessed,
75 to be collected and paid as hereinafter provided in this chapter,
76 an excise tax on each person or dealer in cigarettes, cigars,
77 stogies, snuff, chewing tobacco, and smoking tobacco, or
78 substitutes therefor, upon the sale, use, consumption, handling or
79 distribution in the State of Mississippi, as follows:

80 (a) On cigarettes, the rate of tax shall be Five Cents
81 (5¢) on each cigarette sold with a maximum length of one hundred
82 twenty (120) millimeters; any cigarette in excess of this length
83 shall be taxed as if it were two (2) or more cigarettes.
84 Provided, however, if the federal tax rate on cigarettes in effect
85 June 1, 1985, is reduced, then the rate as provided herein shall
86 be increased by the amount of the federal tax reduction. Such tax
87 increase shall take effect on the first day of the month following
88 the effective date of such reduction in the federal tax rate.

89 (b) On cigars, cheroots, stogies, snuff, chewing and
90 smoking tobacco and all other tobacco products except cigarettes,
91 the rate of tax shall be fifteen percent (15%) of the
92 manufacturer's list price.

93 (2) No stamp evidencing the tax * * * levied on cigarettes
94 by this section shall be of a denomination of less than One Cent
95 (1¢), and whenever the tax computed at the rates * * * prescribed
96 on cigarettes in this section is a specified amount, plus a
97 fractional part of One Cent (1¢), the package shall be stamped for
98 the next full cent. * * *

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

102 (4) The * * * tax levied by this section is levied upon the
103 sale, use, gift, possession or consumption of tobacco within the
104 State of Mississippi, and the impact of the tax levied by this
105 section is * * * declared to be on the vendee, user, consumer or
106 possessor of tobacco in this state. * * * When the tax is paid by

107 any other person, the payment shall be considered as an advance
108 payment and shall thereafter be added to the price of the tobacco
109 and recovered from the ultimate consumer or user.

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

112 27-65-75. On or before the fifteenth day of each month, the
113 revenue collected under the provisions of this chapter during the
114 preceding month shall be paid and distributed as follows:

115 (1) (a) On or before August 15, 1992, and each succeeding
116 month thereafter through July 15, 1993, eighteen percent (18%) of
117 the total sales tax revenue collected during the preceding month
118 under the provisions of this chapter, except that collected under
119 the provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on
120 business activities within a municipal corporation shall be
121 allocated for distribution to the municipality and paid to the
122 municipal corporation. On or before August 15, 1993, and each
123 succeeding month thereafter through August 15, 2007, eighteen and
124 one-half percent (18-1/2%) of the total sales tax revenue
125 collected during the preceding month under the provisions of this
126 chapter, except that collected under the provisions of Sections
127 27-65-15, 27-65-19(3) and 27-65-21, on business activities within
128 a municipal corporation shall be allocated for distribution to the
129 municipality and paid to the municipal corporation. On or before
130 September 15, 2007, and each succeeding month thereafter, eighteen
131 and one-half percent (18-1/2%) of the total sales tax revenue
132 collected during the preceding month under the provisions of this
133 chapter, except that collected under the provisions of Sections
134 27-65-15, 27-65-19(3), 27-65-21 and 27-65-26, on business
135 activities within a municipal corporation and thirty-seven percent
136 (37%) of the total sales tax revenue collected during the
137 preceding month under the provisions of Section 27-65-26 on
138 business activities within a municipal corporation shall be

139 allocated for distribution to the municipality and paid to the
140 municipal corporation.

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

144 Monies allocated for distribution and credited to a municipal
145 corporation under this subsection may be pledged as security for a
146 loan if the distribution received by the municipal corporation is
147 otherwise authorized or required by law to be pledged as security
148 for such a loan.

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

156 (b) On or before August 15, 2006, and each succeeding
157 month thereafter, eighteen and one-half percent (18-1/2%) of the
158 total sales tax revenue collected during the preceding month under
159 the provisions of this chapter, except that collected under the
160 provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on
161 business activities on the campus of a state institution of higher
162 learning or community or junior college whose campus is not
163 located within the corporate limits of a municipality, shall be
164 allocated for distribution to the state institution of higher
165 learning or community or junior college and paid to the state
166 institution of higher learning or community or junior college.

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

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

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

204 (4) On or before August 15, 1994, and on or before the
205 fifteenth day of each succeeding month through July 15, 1999, from
206 the proceeds of gasoline, diesel fuel or kerosene taxes as
207 provided in Section 27-5-101(a)(ii)1, Four Million Dollars
208 (\$4,000,000.00) shall be deposited in the State Treasury to the
209 credit of a special fund designated as the "State Aid Road Fund,"
210 created by Section 65-9-17. On or before August 15, 1999, and on
211 or before the fifteenth day of each succeeding month, from the
212 total amount of the proceeds of gasoline, diesel fuel or kerosene
213 taxes apportioned by Section 27-5-101(a)(ii)1, Four Million
214 Dollars (\$4,000,000.00) or an amount equal to twenty-three and
215 one-fourth percent (23-1/4%) of those funds, whichever is the
216 greater amount, shall be deposited in the State Treasury to the
217 credit of the "State Aid Road Fund," created by Section 65-9-17.
218 Those funds shall be pledged to pay the principal of and interest
219 on state aid road bonds heretofore issued under Sections 19-9-51
220 through 19-9-77, in lieu of and in substitution for the funds
221 previously allocated to counties under this section. Those funds
222 may not be pledged for the payment of any state aid road bonds
223 issued after April 1, 1981; however, this prohibition against the
224 pledging of any such funds for the payment of bonds shall not
225 apply to any bonds for which intent to issue those bonds has been
226 published, for the first time, as provided by law before March 29,
227 1981. From the amount of taxes paid into the special fund under
228 this subsection and subsection (9) of this section, there shall be
229 first deducted and paid the amount necessary to pay the expenses
230 of the Office of State Aid Road Construction, as authorized by the
231 Legislature for all other general and special fund agencies. The
232 remainder of the fund shall be allocated monthly to the several
233 counties in accordance with the following formula:

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

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

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

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

247 The amount of funds allocated to any county under this
248 subsection for any fiscal year after fiscal year 1994 shall not be
249 less than the amount allocated to the county for fiscal year 1994.

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

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

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

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

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

287 (8) On or before August 15, 1992, and each succeeding month
288 thereafter, nine and seventy-three one-thousandths percent
289 (9.073%) of the total sales tax revenue collected during the
290 preceding month under the provisions of this chapter, except that
291 collected under the provisions of Section 27-65-17(2), shall be
292 deposited into the Education Enhancement Fund created under
293 Section 37-61-33.

294 (9) On or before August 15, 1994, and each succeeding month
295 thereafter, from the revenue collected under this chapter during
296 the preceding month, Two Hundred Fifty Thousand Dollars
297 (\$250,000.00) shall be paid into the State Aid Road Fund.

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

301 (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad
302 Valorem Tax Reduction Fund established in Section 27-51-105.

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

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

321 (13) On or before July 15, 1994, and on or before the
322 fifteenth day of each succeeding month thereafter, that portion of
323 the avails of the tax imposed in Section 27-65-22 that is derived
324 from activities held on the Mississippi State Fairgrounds Complex,
325 shall be paid into a special fund that is created in the State
326 Treasury and shall be expended upon legislative appropriation
327 solely to defray the costs of repairs and renovation at the Trade
328 Mart and Coliseum.

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

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

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

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

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

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

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

367 redevelopment project area under the provisions of Sections
368 57-91-1 through 57-91-11, and the revenue collected on the gross
369 proceeds of sales from sales made to a business enterprise located
370 in a redevelopment project area under the provisions of Sections
371 57-91-1 through 57-91-11 (provided that such sales made to a
372 business enterprise are made on the premises of the business
373 enterprise), shall, except as otherwise provided in this
374 subsection (19), be deposited, after all diversions, into the
375 Redevelopment Project Incentive Fund as created in Section
376 57-91-9.

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

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

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

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

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

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

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

409 (20) On or before January 15, 2007, and each succeeding
410 month thereafter, eighty percent (80%) of the sales tax revenue
411 collected during the preceding month under the provisions of this
412 chapter from the operation of a tourism project under the
413 provisions of Sections 57-28-1 through 57-28-5, shall be
414 deposited, after the diversions required in subsections (7) and
415 (8) of this section, into the Tourism Sales Tax Incentive Fund
416 created in Section 57-28-3.

417 (21) On or before September 15, 2007, and each succeeding
418 month thereafter, the following amount of sales tax revenue
419 collected during the preceding month under the provisions of this
420 chapter shall be deposited, after all diversions, into the
421 following funds:

422 (a) One Million Three Hundred Five Thousand Dollars
423 (\$1,305,000.00) into the Education Enhancement Fund created under
424 Section 37-61-33.

425 (b) Three Hundred Twenty-six Thousand Dollars
426 (\$326,000.00) into the School Ad Valorem Tax Reduction Fund
427 created under Section 37-61-35.

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

431 (23) It shall be the duty of the municipal officials of any
432 municipality that expands its limits, or of any community that

433 incorporates as a municipality, to notify the commissioner of that
434 action thirty (30) days before the effective date. Failure to so
435 notify the commissioner shall cause the municipality to forfeit
436 the revenue that it would have been entitled to receive during
437 this period of time when the commissioner had no knowledge of the
438 action. If any funds have been erroneously disbursed to any
439 municipality or any overpayment of tax is recovered by the
440 taxpayer, the commissioner may make correction and adjust the
441 error or overpayment with the municipality by withholding the
442 necessary funds from any later payment to be made to the
443 municipality.

444 **SECTION 3.** Section 27-69-31, Mississippi Code of 1972, is
445 amended as follows:

446 27-69-31. Dealers subject to the provisions of this chapter
447 shall be allowed, as compensation for their services in affixing
448 the stamps * * * required by this chapter, a sum equal to eight
449 percent (8%) of the face value of the stamps purchased by them;
450 however, the additional face value of stamps purchased to comply
451 with taxes imposed by Section 27-69-31 after June 1, 1985, and
452 prior to July 1, 2007, shall be subject to a four percent (4%)
453 discount or compensation to dealers for their services rather than
454 the eight percent (8%) discount or compensation allowed by this
455 section, and the additional face value of stamps purchased to
456 comply with taxes imposed by Section 27-69-31 on or after July 1,
457 2007, shall be subject to a one percent (1%) discount rather than
458 the eight percent (8%) discount or compensation allowed by this
459 section. The commission shall allow no discount on the purchase
460 of stamps by wholesalers of an aggregate amount of less than One
461 Hundred Dollars (\$100.00), and by retailers of an aggregate amount
462 of less than Fifty Dollars (\$50.00) in any one order.

463 * * * The commissioner may, in his discretion, either
464 reduce the compensation allowed, or disallow any compensation for
465 the affixing of stamps, for failure of the dealer to comply with

466 any provisions of the law or rules and regulations promulgated by
467 the commissioner.

468 **SECTION 4.** The following provision shall be codified as
469 Section 27-65-26, Mississippi Code of 1972:

470 27-65-26. From and after July 1, 2007, retail sales of food
471 for human consumption not purchased with food stamps issued by the
472 United States Department of Agriculture, or other federal agency,
473 but which would be exempt under paragraph (o) of Section 27-65-111
474 from the taxes imposed by this chapter if the food items were
475 purchased with food stamps, shall be taxed at the rate of three
476 and one-half percent (3-1/2%).

477 **SECTION 5.** Section 27-65-17, Mississippi Code of 1972, is
478 amended as follows:

479 27-65-17. (1) (a) Except as otherwise provided in this
480 section, upon every person engaging or continuing within this
481 state in the business of selling any tangible personal property
482 whatsoever there is hereby levied, assessed and shall be collected
483 a tax equal to seven percent (7%) of the gross proceeds of the
484 retail sales of the business.

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

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

496 (i) Self-propelled, or

497 (ii) Mounted so that it is permanently attached to
498 other equipment which is self-propelled or permanently attached to
499 other equipment drawn by a vehicle which is self-propelled.

500 (d) Except as otherwise provided in subsection (3) of
501 this section, retail sales of aircraft, automobiles, trucks,
502 truck-tractors, semitrailers and manufactured or mobile homes
503 shall be taxed at the rate of three percent (3%).

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

510 (f) Sales of machinery and machine parts when made to a
511 technology intensive enterprise for plant use only when the
512 machinery and machine parts will be used exclusively and directly
513 within this state for industrial purposes, including, but not
514 limited to, manufacturing or research and development activities,
515 shall be taxed at the rate of one and one-half percent (1-1/2%).
516 In order to be considered a technology intensive enterprise for
517 purposes of this paragraph:

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

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

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

525 (iv) The enterprise shall manufacture plastics,
526 chemicals, automobiles, aircraft, computers or electronics; or
527 shall be a research and development facility, a computer design or
528 related facility, or a software publishing facility or other

529 technology intensive facility or enterprise as determined by the
530 Mississippi Development Authority;

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

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

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

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

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

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

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

562 (1) Sales of the factory-built components of modular
563 homes, panelized homes and precut homes, and panel constructed
564 homes consisting of structural insulated panels, shall be taxed at
565 the rate of three percent (3%).

566 (m) From and after July 1, 2007, retail sales of food
567 for human consumption not purchased with food stamps issued by the
568 United States Department of Agriculture, or other federal agency,
569 but which would be exempt under paragraph (o) of Section 27-65-111
570 from the taxes imposed by this chapter if the food items were
571 purchased with food stamps, shall be taxed as provided for in
572 Section 27-65-26.

573 (2) From and after January 1, 1995, retail sales of private
574 carriers of passengers and light carriers of property, as defined
575 in Section 27-51-101, shall be taxed an additional two percent
576 (2%).

577 (3) In lieu of the tax levied in subsection (1) of this
578 section, there is levied on retail sales of truck-tractors and
579 semitrailers used in interstate commerce and registered under the
580 International Registration Plan (IRP) or any similar reciprocity
581 agreement or compact relating to the proportional registration of
582 commercial vehicles entered into as provided for in Section
583 27-19-143, a tax at the rate of three percent (3%) of the portion
584 of the sale that is attributable to the usage of such
585 truck-tractor or semitrailer in Mississippi. The portion of the
586 retail sale that is attributable to the usage of such
587 truck-tractor or semitrailer in Mississippi is the retail sales
588 price of the truck-tractor or semitrailer multiplied by the
589 percentage of the total miles traveled by the vehicle that are
590 traveled in Mississippi. The tax levied pursuant to this
591 subsection (3) shall be collected by the State Tax Commission from
592 the purchaser of such truck-tractor or semitrailer at the time of
593 registration of such truck-tractor or semitrailer.

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

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

601 **SECTION 6.** The purpose of Sections 6 through 18 of this act
602 is to:

603 (a) Prevent nonsettling manufacturers from undermining
604 this state's policy of discouraging underage smoking by offering
605 cigarettes and cigarette tobacco products at prices that are
606 substantially below the prices of cigarettes and cigarette tobacco
607 products of other manufacturers;

608 (b) Protect the tobacco settlement agreement, and
609 funding, which has been reduced because of the growth of sales of
610 nonsettling-manufacturer cigarettes and cigarette tobacco
611 products, for programs that are funded wholly or partly by
612 payments to this state under the tobacco settlement agreement and
613 recoup for this state settlement payment revenue lost because of
614 sales of nonsettling-manufacturer cigarettes and cigarette tobacco
615 products;

616 (c) Provide funding to enforce and administer Sections
617 6 through 18 of this act and any legislation relating to
618 nonsettling manufacturers; and

619 (d) Provide funding for any other purpose the
620 Legislature determines.

621 **SECTION 7.** As used in Sections 6 through 18 of this act:

622 (a) "Brand family" means each style of cigarettes or
623 cigarette tobacco products sold under the same trademark and
624 differentiated from one another by means of additional modifiers,
625 including "menthol," "lights," "kings," and "100s." The term
626 includes any style of cigarettes or cigarette tobacco products

627 that have a brand name, trademark, logo, symbol, motto, selling
628 message, recognizable pattern of colors, or other indication of
629 product identification that is identical to, similar to, or
630 identifiable with a previously known brand of cigarettes or
631 cigarette tobacco products.

632 (b) "Cigarette" means any product that contains
633 nicotine and is intended to be burned or heated under ordinary
634 conditions of use. The term includes:

635 (i) A roll of tobacco wrapped in paper or another
636 substance that does not contain tobacco;

637 (ii) Tobacco, in any form, that is functional in a
638 product that, because of the product's appearance, the type of
639 tobacco used in the filler, or the product's packaging and
640 labeling, is likely to be offered to or purchased by a consumer as
641 a cigarette; or

642 (iii) A roll of tobacco wrapped in any substance
643 containing tobacco that, because of the product's appearance, the
644 type of tobacco used in the filler, or the product's packaging and
645 labeling, is likely to be offered to or purchased by a consumer as
646 a cigarette.

647 (c) "Cigarette tobacco product" means roll-your-own
648 tobacco or tobacco that, because of the tobacco's appearance,
649 type, packaging, or labeling, is suitable for use in making
650 cigarettes and is likely to be offered to or purchased by a
651 consumer for that purpose.

652 (d) "Commissioner" means the Chairman of the State Tax
653 Commission and his authorized agents and employees.

654 (e) "Manufacturer" means a person that manufactures,
655 fabricates or assembles cigarettes for sale or distribution. For
656 purposes of Sections 6 through 18 of this act, the term includes a
657 person that is the first importer into the United States of
658 cigarettes and cigarette tobacco products manufactured outside the
659 United States.

660 (f) "Master settlement agreement" means the settlement
661 agreement and related documents entered into in 1998 by forty-six
662 (46) states and leading United States tobacco manufacturers.

663 (g) "Nonsettling manufacturer" means a manufacturer of
664 cigarettes that did not sign the tobacco settlement agreement.

665 (h) "Nonsettling-manufacturer cigarettes" means
666 cigarettes manufactured, fabricated, assembled or imported by a
667 nonsettling manufacturer.

668 (i) "Nonsettling-manufacturer cigarette tobacco
669 products" means cigarette tobacco products manufactured,
670 fabricated assembled or imported by a nonsettling manufacturer.

671 (j) "Tobacco settlement agreement" means the
672 Comprehensive Settlement Agreement and Release filed December 29,
673 1997, in the Chancery Court of Jackson County, State of
674 Mississippi, in the case styled In Re Mike Moore, Attorney
675 General, ex rel. State of Mississippi Tobacco Litigation, Cause
676 No. 94-1429, and all subsequent amendments thereto.

677 (k) "Distributor" shall have the same meaning ascribed
678 to that term in Section 27-69-3.

679 **SECTION 8.** (1) A fee is imposed on the sale, use,
680 consumption or distribution in this state of:

681 (a) Nonsettling-manufacturer cigarettes if a stamp is
682 required to be affixed to a package of those cigarettes under the
683 Tobacco Tax Law;

684 (b) Nonsettling-manufacturer cigarettes that are sold,
685 purchased or distributed in this state but that are not required
686 to have a stamp affixed to a package of those cigarettes under the
687 Tobacco Tax Law; and

688 (c) Nonsettling-manufacturer cigarette tobacco products
689 that are subject to the tax imposed by Section 27-69-13.

690 (2) The fee imposed by Sections 6 through 18 of this act
691 does not apply to cigarettes or cigarette tobacco products that

692 are included in computing payments due to be made by a settling
693 manufacturer under the tobacco settlement agreement.

694 (3) The fee imposed by Sections 6 through 18 of this act is
695 in addition to any other privilege, license, fee or tax required
696 or imposed by state law.

697 (4) Except as otherwise provided by Sections 6 through 18 of
698 this act, the fee imposed by Sections 6 through 18 of this act is
699 imposed, collected, paid, administered, and enforced in the same
700 manner, taking into account that the fee is imposed on nonsettling
701 manufacturers, as the taxes imposed by the Tobacco Tax Law, as
702 appropriate.

703 **SECTION 9.** (1) Except as provided by subsection (2) of this
704 section, the fee is imposed at the rate of Two and
705 Three-twentieths Cents (2-3/20¢) for:

- 706 (a) Each nonsettling-manufacturer cigarette; and
707 (b) Each nine one-hundredths (0.09) ounce of
708 nonsettling-manufacturer cigarette tobacco product.

709 (2) On January 1 of each year, the fee prescribed by
710 subsection (1) of this section shall increase by the greater of:

- 711 (a) Three percent (3%); or
712 (b) The percentage increase in the most recent annual
713 revised Consumer Price Index for all Urban Consumers, as published
714 by the Federal Bureau of Labor Statistics of the United States
715 Department of Labor.

716 (3) The revenue collected from the fee imposed by this
717 section shall be deposited into the State General Fund.

718 **SECTION 10.** (1) A distributor required to file a monthly
719 report under Section 27-69-35, shall, in addition to the
720 information required by that section, include in the report the
721 following information:

- 722 (a) The number and denominations of stamps affixed to
723 individual packages of nonsettling-manufacturer cigarettes during
724 the preceding month;

725 (b) The number of individual packages of
726 nonsettling-manufacturer cigarettes sold or purchased in this
727 state or otherwise distributed in this state for sale in the
728 United States; and

729 (c) Any other information the commissioner considers
730 necessary or appropriate to determine the amount of the fee
731 imposed by Sections 6 through 18 of this act or to enforce
732 Sections 6 through 18 of this act.

733 (2) The information required by subsection (1)(a) and (b)
734 must be itemized for each place of business and by manufacturer
735 and brand family.

736 (3) The requirement to report information under this section
737 shall be enforced in the same manner as the requirement to deliver
738 to or file with the comptroller a report required under the
739 Tobacco Tax Law.

740 **SECTION 11.** (1) Each month, not later than the 10th day
741 after the date the commissioner receives the information required
742 by Section 10 of this act, the commissioner shall:

743 (a) Compute the amount of the fee imposed by Sections 6
744 through 18 of this act that each nonsettling manufacturer owes for
745 that reporting period based on that information and any other
746 information available to the commissioner; and

747 (b) Mail to each nonsettling manufacturer a notice of
748 the amount of fee the manufacturer owes.

749 (2) Not later than the 15th day of the month after the month
750 in which the commissioner mails a nonsettling manufacturer a
751 notice under subsection (1) of this section, the nonsettling
752 manufacturer shall send to the commissioner the amount of the fee
753 due according to the notice.

754 **SECTION 12.** (1) Not later than the first day of each month,
755 a nonsettling manufacturer who is required to pay the fee imposed
756 by Sections 6 through 18 of this act shall certify to the Attorney
757 General that the manufacturer is in compliance with Sections 6

758 through 18 of this act and has paid in full the fee imposed by
759 Sections 6 through 18 of this act.

760 (2) The Attorney General shall develop, maintain and publish
761 on the Attorney General's Internet Web site a directory listing of
762 all nonsettling manufacturers that have been provided current,
763 accurate and complete certifications. The listing shall also
764 include all manufacturers of cigarettes that signed the tobacco
765 settlement agreement.

766 (3) The Attorney General shall provide the list described by
767 subsection (2) of this section to any person on request.

768 **SECTION 13.** (1) If cigarettes or cigarette tobacco products
769 of a nonsettling manufacturer are not offered for sale or
770 distribution in this state on September 1, 2007, the nonsettling
771 manufacturer may not offer those cigarettes or cigarette tobacco
772 products for sale or distribution in this state after that date
773 unless the manufacturer first prepays the fee imposed by Sections
774 6 through 18 of this act for sales of cigarettes and cigarette
775 tobacco products that will occur in the first calendar month in
776 which they are sold or distributed in this state.

777 (2) The amount a nonsettling manufacturer is required to
778 prepay under this section is equal to the greater of:

779 (a) The rate prescribed by Section 9 of this act in
780 effect on that date multiplied by:

781 (i) The number of cigarettes the commissioner
782 reasonably projects that the nonsettling manufacturer will sell or
783 distribute in this state during that calendar month; and

784 (ii) Each nine one-hundredths (0.09) ounce of
785 nonsettling-manufacturer cigarette tobacco products the
786 commissioner reasonably projects that the nonsettling manufacturer
787 will sell or distribute in this state during that calendar month;
788 or

789 (b) Fifty Thousand Dollars (\$50,000.00).

790 (3) The fee imposed by this section does not apply to
791 cigarettes or cigarette tobacco products that are included in
792 computing payments due to be made by a settling manufacturer under
793 the tobacco settlement agreement.

794 (4) The commissioner may require a nonsettling manufacturer
795 to provide any information reasonably necessary to determine the
796 prepayment amount.

797 (5) The commissioner shall establish procedures to:

798 (a) Reimburse a nonsettling manufacturer if the actual
799 sales or distributions in the first calendar month are less than
800 the projected sales or distributions; and

801 (b) Require additional payments if the actual sales or
802 distributions in the first calendar month are greater than the
803 projected sales or distributions.

804 (6) A nonsettling manufacturer shall pay the fee imposed by
805 Sections 6 through 18 of this act in the manner provided by
806 Section 27-69-91, beginning in the second calendar month in which
807 the manufacturer offers the cigarettes or cigarette tobacco
808 products for sale or distribution in this state.

809 **SECTION 14.** (1) In addition to prepaying the fee required
810 by Section 13 of this act, a nonsettling manufacturer described by
811 Section 13(1) of this act shall, before the date the cigarettes or
812 cigarette tobacco products are offered for sale or distribution in
813 this state, provide to the Attorney General on a form prescribed
814 by the Attorney General:

815 (a) The nonsettling manufacturer's complete name,
816 address and telephone number;

817 (b) The date that the nonsettling manufacturer will
818 begin offering cigarettes or cigarette tobacco products for sale
819 or distribution in this state;

820 (c) The names of the brand families of the cigarettes
821 or cigarette tobacco products that the nonsettling manufacturer
822 will offer for sale or distribution in this state;

823 (d) A statement that the nonsettling manufacturer
824 intends to comply with Sections 6 through 18 of this act; and

825 (e) The name, address, telephone number and signature
826 of an officer of the nonsettling manufacturer attesting to all of
827 the included information.

828 (2) The Attorney General shall make the information provided
829 under this section available to the commissioner.

830 **SECTION 15.** (1) Cigarettes and cigarette tobacco products
831 of a nonsettling manufacturer that has not complied with Sections
832 6 through 18 of this act, including full payment of the fee
833 imposed by Sections 6 through 18 of this act, shall be treated as
834 tobacco for which the tax assessed by the Tobacco Tax Law, has not
835 been paid, and the manufacturer is subject to all penalties
836 imposed by that act for violations of that act.

837 (2) The commissioner shall provide to a nonsettling
838 manufacturer and each distributor authorized to affix tax stamps
839 pursuant to the Tobacco Tax Act, a notice of noncompliance with
840 Sections 6 through 18 of this act if the manufacturer:

841 (a) Does not pay in full the fee imposed by Sections 6
842 through 18 of this act; or

843 (b) Is not included on the list described by Section
844 12(2) of this act.

845 (3) If a nonsettling manufacturer does not appear in the
846 Attorney General's directory required by Section 12(2) of this
847 act, or upon receipt of the notice of noncompliance described in
848 subsection (2) of this section with respect to a nonsettling
849 manufacturer, no distributor may, with respect to cigarettes
850 manufactured by such nonsettling manufacturer:

851 (a) Pay the tax imposed by the Tobacco Tax Law;

852 (b) Affix to a package of cigarettes the stamp required
853 by Section 27-69-15; or

854 (c) Otherwise purchase, sell or distribute cigarettes
855 manufactured by such nonsettling manufacturer in this state.

856 **SECTION 16.** Any nonsettling manufacturer that complies with
857 the provisions of Sections 6 through 18 of this act shall be
858 entitled to the same protections from civil liability as set forth
859 in the tobacco settlement agreement for settling manufacturers
860 only if the nonsettling manufacturer also strictly follows the
861 mandates and restrictions in the tobacco settlement agreement.

862 **SECTION 17.** Sections 6 through 18 of this act applies
863 without regard to Section 27-69-19, or any other law that might be
864 read to create an exemption for interstate sales.

865 **SECTION 18.** (1) Not later than September 30, 2007, a
866 nonsettling manufacturer that is offering cigarettes or cigarette
867 tobacco products for sale or distribution in this state on
868 September 1, 2007, shall provide to the Attorney General on a form
869 prescribed by the Attorney General:

870 (a) The nonsettling manufacturer's complete name,
871 address, and telephone number;

872 (b) The date that the nonsettling manufacturer began
873 offering cigarettes or cigarette tobacco products for sale or
874 distribution in this state;

875 (c) The names of the brand families of the cigarettes
876 or cigarette tobacco products that the nonsettling manufacturer
877 offers for sale or distribution in this state;

878 (d) A statement that the nonsettling manufacturer
879 intends to comply with Sections 6 through 18 of this act; and

880 (e) The name, address, telephone number and signature
881 of an officer of the nonsettling manufacturer attesting to all of
882 the included information.

883 (2) The Attorney General shall make the information provided
884 under subsection (1) of this section available to the
885 commissioner.

886 **SECTION 19.** This act shall take effect and be in force from
887 and after July 1, 2007.