

By: Senator(s) Blount, Powell, Baria,
Montgomery, Davis (36th), Stone

To: Finance

SENATE BILL NO. 2439

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
27 NONSETTLING-MANUFACTURERS THAT HAVE CERTIFIED THEIR COMPLIANCE
28 WITH THIS ACT; TO PROVIDE FOR ENFORCEMENT OF THE REQUIREMENTS
29 IMPOSED BY THIS ACT; TO GRANT PROTECTIONS FROM CIVIL LIABILITY TO
30 NONSETTLING-MANUFACTURERS THAT COMPLY WITH THE PROVISIONS OF THIS
31 ACT; AND FOR 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, 2009, 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 on June 1, 1985, is reduced, then the rate as provided herein
48 shall be increased by the amount of the federal tax reduction.
49 Such tax increase shall take effect on the first day of the month
50 following the effective date of such reduction in the federal tax
51 rate.

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

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

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

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



73 [From and after July 1, 2009, this section shall read as

74 follows:]

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

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

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

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

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

104 (4) The * * * tax levied by this section is levied upon the
105 sale, use, gift, possession or consumption of tobacco within the



106 State of Mississippi, and the impact of the tax levied by this
107 section is * * * declared to be on the vendee, user, consumer or
108 possessor of tobacco in this state. When the tax is paid by any
109 other person, the payment shall be considered as an advance
110 payment and shall thereafter be added to the price of the tobacco
111 and recovered from the ultimate consumer or user.

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

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

117 (1) (a) On or before August 15, 1992, and each succeeding
118 month thereafter through July 15, 1993, eighteen percent (18%) of
119 the total sales tax revenue collected during the preceding month
120 under the provisions of this chapter, except that collected under
121 the provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on
122 business activities within a municipal corporation shall be
123 allocated for distribution to the municipality and paid to the
124 municipal corporation. On or before August 15, 1993, and each
125 succeeding month thereafter through August 15, 2008, eighteen and
126 one-half percent (18-1/2%) of the total sales tax revenue
127 collected during the preceding month under the provisions of this
128 chapter, except that collected under the provisions of Sections
129 27-65-15, 27-65-19(3) and 27-65-21, on business activities within
130 a municipal corporation shall be allocated for distribution to the
131 municipality and paid to the municipal corporation. On or before
132 September 15, 2008, and each succeeding month thereafter, eighteen
133 and one-half percent (18-1/2%) of the total sales tax revenue
134 collected during the preceding month under the provisions of this
135 chapter, except that collected under the provisions of Sections
136 27-65-15, 27-65-19(3), 27-65-21 and 27-65-26, on business
137 activities within a municipal corporation and thirty-seven percent
138 (37%) of the total sales tax revenue collected during the



139 preceding month under the provisions of Section 27-65-26 on
140 business activities within a municipal corporation shall be
141 allocated for distribution to the municipality and paid to the
142 municipal corporation.

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

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

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

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

169 (2) On or before September 15, 1987, and each succeeding
170 month thereafter, from the revenue collected under this chapter
171 during the preceding month, One Million One Hundred Twenty-five



172 Thousand Dollars (\$1,125,000.00) shall be allocated for
173 distribution to municipal corporations as defined under subsection
174 (1) of this section in the proportion that the number of gallons
175 of gasoline and diesel fuel sold by distributors to consumers and
176 retailers in each such municipality during the preceding fiscal
177 year bears to the total gallons of gasoline and diesel fuel sold
178 by distributors to consumers and retailers in municipalities
179 statewide during the preceding fiscal year. The State Tax
180 Commission shall require all distributors of gasoline and diesel
181 fuel to report to the commission monthly the total number of
182 gallons of gasoline and diesel fuel sold by them to consumers and
183 retailers in each municipality during the preceding month. The
184 State Tax Commission shall have the authority to promulgate such
185 rules and regulations as is necessary to determine the number of
186 gallons of gasoline and diesel fuel sold by distributors to
187 consumers and retailers in each municipality. In determining the
188 percentage allocation of funds under this subsection for the
189 fiscal year beginning July 1, 1987, and ending June 30, 1988, the
190 State Tax Commission may consider gallons of gasoline and diesel
191 fuel sold for a period of less than one (1) fiscal year. For the
192 purposes of this subsection, the term "fiscal year" means the
193 fiscal year beginning July 1 of a year.

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



204 necessary to determine the amount of proceeds to be distributed
205 under this subsection.

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



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

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

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

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

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

252 Any reference in the general laws of this state or the
253 Mississippi Code of 1972 to Section 27-5-105 shall mean and be
254 construed to refer and apply to subsection (4) of Section
255 27-65-75.

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

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

267 (7) On or before August 15, 1992, and each succeeding month
268 thereafter through July 15, 2000, two and two hundred sixty-six



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

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

296 (9) On or before August 15, 1994, and each succeeding month
297 thereafter, from the revenue collected under this chapter during
298 the preceding month, Two Hundred Fifty Thousand Dollars
299 (\$250,000.00) shall be paid into the State Aid Road Fund.

300 (10) On or before August 15, 1994, and each succeeding month
301 thereafter through August 15, 1995, from the revenue collected



302 under this chapter during the preceding month, Two Million Dollars
303 (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad
304 Valorem Tax Reduction Fund established in Section 27-51-105.

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

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

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

331 (14) On or before August 15, 1998, and each succeeding month
332 thereafter through July 15, 2005, that portion of the avails of
333 the tax imposed in Section 27-65-23 that is derived from sales by
334 cotton compresses or cotton warehouses and that would otherwise be



335 paid into the General Fund, shall be deposited in an amount not to
336 exceed Two Million Dollars (\$2,000,000.00) into the special fund
337 created under Section 69-37-39. On or before August 15, 2007, and
338 each succeeding month thereafter, that portion of the avails of
339 the tax imposed in Section 27-65-23 that is derived from sales by
340 cotton compresses or cotton warehouses and that would otherwise be
341 paid into the General Fund, shall be deposited in an amount not to
342 exceed Two Million Dollars (\$2,000,000.00) into the special fund
343 created under Section 69-37-39 until all debts or other
344 obligations incurred by the Certified Cotton Growers Organization
345 under the Mississippi Boll Weevil Management Act before January 1,
346 2007, are satisfied in full.

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

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

361 (b) On or before August 15, 2007, and each succeeding
362 month thereafter, eighty percent (80%) of the sales tax revenue
363 collected during the preceding month under the provisions of this
364 chapter from the operation of a tourism project under the
365 provisions of Sections 57-26-1 through 57-26-5, shall be
366 deposited, after the diversions required in subsections (7) and



367 (8) of this section, into the Tourism Project Sales Tax Incentive
368 Fund created in Section 57-26-3.

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

376 (18) On or before August 15, 2007, and each succeeding month
377 thereafter through July 15, 2008, from the sales tax revenue
378 collected during the preceding month under the provisions of this
379 chapter, Two Million Five Hundred Thousand Dollars (\$2,500,000.00)
380 shall be deposited into the Special Funds Transfer Fund created in
381 Section 4 of Chapter 556, Laws of 2003. This subsection shall
382 stand repealed from and after May 11, 2007.

383 (19) (a) On or before August 15, 2005, and each succeeding
384 month thereafter, the sales tax revenue collected during the
385 preceding month under the provisions of this chapter on the gross
386 proceeds of sales of a business enterprise located within a
387 redevelopment project area under the provisions of Sections
388 57-91-1 through 57-91-11, and the revenue collected on the gross
389 proceeds of sales from sales made to a business enterprise located
390 in a redevelopment project area under the provisions of Sections
391 57-91-1 through 57-91-11 (provided that such sales made to a
392 business enterprise are made on the premises of the business
393 enterprise), shall, except as otherwise provided in this
394 subsection (19), be deposited, after all diversions, into the
395 Redevelopment Project Incentive Fund as created in Section
396 57-91-9.

397 (b) For a municipality participating in the Economic
398 Redevelopment Act created in Sections 57-91-1 through 57-91-11,
399 the diversion provided for in subsection (1) of this section



400 attributable to the gross proceeds of sales of a business
401 enterprise located within a redevelopment project area under the
402 provisions of Sections 57-91-1 through 57-91-11, and attributable
403 to the gross proceeds of sales from sales made to a business
404 enterprise located in a redevelopment project area under the
405 provisions of Sections 57-91-1 through 57-91-11 (provided that
406 such sales made to a business enterprise are made on the premises
407 of the business enterprise), shall be deposited into the
408 Redevelopment Project Incentive Fund as created in Section
409 57-91-9, as follows:

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

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

418 (iii) For the eighth year in which such payments
419 are made to a developer from the Redevelopment Project Incentive
420 Fund, seventy percent (70%) of the diversion shall be deposited
421 into the fund;

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

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

429 (20) On or before January 15, 2007, and each succeeding
430 month thereafter, eighty percent (80%) of the sales tax revenue
431 collected during the preceding month under the provisions of this
432 chapter from the operation of a tourism project under the



433 provisions of Sections 57-28-1 through 57-28-5, shall be
434 deposited, after the diversions required in subsections (7) and
435 (8) of this section, into the Tourism Sales Tax Incentive Fund
436 created in Section 57-28-3.

437 (21) On or before April 15, 2007, and each succeeding month
438 thereafter, One Hundred Fifty Thousand Dollars (\$150,000.00) of
439 the sales tax revenue collected during the preceding month under
440 the provisions of this chapter shall be deposited into the MMEIA
441 Tax Incentive Fund created in Section 57-101-3.

442 (22) On or before September 15, 2008, and each succeeding
443 month thereafter, the following amount of sales tax revenue
444 collected during the preceding month under the provisions of this
445 chapter shall be deposited, after all diversions, into the
446 following funds:

447 (a) One Million Three Hundred Five Thousand Dollars
448 (\$1,305,000.00) into the Education Enhancement Fund created under
449 Section 37-61-33.

450 (b) Three Hundred Twenty-six Thousand Dollars
451 (\$326,000.00) into the School Ad Valorem Tax Reduction Fund
452 created under Section 37-61-35.

453 (23) The remainder of the amounts collected under the
454 provisions of this chapter shall be paid into the State Treasury
455 to the credit of the General Fund.

456 (24) It shall be the duty of the municipal officials of any
457 municipality that expands its limits, or of any community that
458 incorporates as a municipality, to notify the commissioner of that
459 action thirty (30) days before the effective date. Failure to so
460 notify the commissioner shall cause the municipality to forfeit
461 the revenue that it would have been entitled to receive during
462 this period of time when the commissioner had no knowledge of the
463 action. If any funds have been erroneously disbursed to any
464 municipality or any overpayment of tax is recovered by the
465 taxpayer, the commissioner may make correction and adjust the



466 error or overpayment with the municipality by withholding the
467 necessary funds from any later payment to be made to the
468 municipality.

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

471 27-69-31. Dealers subject to the provisions of this chapter
472 shall be allowed, as compensation for their services in affixing
473 the stamps * * * required by this chapter, a sum equal to eight
474 percent (8%) of the face value of the stamps purchased by them;
475 however, the additional face value of stamps purchased to comply
476 with taxes imposed by Section 27-69-31 after June 1, 1985, and
477 prior to July 1, 2008, shall be subject to a four percent (4%)
478 discount or compensation to dealers for their services rather than
479 the eight percent (8%) discount or compensation allowed by this
480 section, and the additional face value of stamps purchased to
481 comply with taxes imposed by Section 27-69-31 on or after July 1,
482 2008, shall be subject to a one percent (1%) discount rather than
483 the eight percent (8%) discount or compensation allowed by this
484 section. * * * The commission shall allow no discount on the
485 purchase of stamps by wholesalers of an aggregate amount of less
486 than One Hundred Dollars (\$100.00), and by retailers of an
487 aggregate amount of less than Fifty Dollars (\$50.00) in any one
488 order.

489 * * * The commissioner may, in his discretion, either
490 reduce the compensation allowed, or disallow any compensation for
491 the affixing of stamps, for failure of the dealer to comply with
492 any provisions of the law or rules and regulations promulgated by
493 the commissioner.

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

496 27-65-26. From and after July 1, 2008, retail sales of food
497 for human consumption not purchased with food stamps issued by the
498 United States Department of Agriculture, or other federal agency,



499 but which would be exempt under paragraph (o) of Section 27-65-111
500 from the taxes imposed by this chapter if the food items were
501 purchased with food stamps, shall be taxed at the rate of three
502 and one-half percent (3-1/2%).

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

505 27-65-17. (1) (a) Except as otherwise provided in this
506 section, upon every person engaging or continuing within this
507 state in the business of selling any tangible personal property
508 whatsoever there is hereby levied, assessed and shall be collected
509 a tax equal to seven percent (7%) of the gross proceeds of the
510 retail sales of the business.

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

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

522 (i) Self-propelled, or

523 (ii) Mounted so that it is permanently attached to
524 other equipment which is self-propelled or permanently attached to
525 other equipment drawn by a vehicle which is self-propelled.

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

530 (e) Sales of manufacturing machinery or manufacturing
531 machine parts when made to a manufacturer or custom processor for



532 plant use only when the machinery and machine parts will be used
533 exclusively and directly within this state in manufacturing a
534 commodity for sale, rental or in processing for a fee shall be
535 taxed at the rate of one and one-half percent (1-1/2%).

536 (f) Sales of machinery and machine parts when made to a
537 technology intensive enterprise for plant use only when the
538 machinery and machine parts will be used exclusively and directly
539 within this state for industrial purposes, including, but not
540 limited to, manufacturing or research and development activities,
541 shall be taxed at the rate of one and one-half percent (1-1/2%).
542 In order to be considered a technology intensive enterprise for
543 purposes of this paragraph:

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

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

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

551 (iv) The enterprise shall manufacture plastics,
552 chemicals, automobiles, aircraft, computers or electronics; or
553 shall be a research and development facility, a computer design or
554 related facility, or a software publishing facility or other
555 technology intensive facility or enterprise as determined by the
556 Mississippi Development Authority;

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

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

562 (g) Sales of materials for use in track and track
563 structures to a railroad whose rates are fixed by the Interstate



564 Commerce Commission or the Mississippi Public Service Commission
565 shall be taxed at the rate of three percent (3%).

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

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

576 (j) Wholesale sales of food and drink for human
577 consumption to full-service vending machine operators to be sold
578 through vending machines located apart from and not connected with
579 other taxable businesses shall be taxed at the rate of eight
580 percent (8%).

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

588 (l) Sales of the factory-built components of modular
589 homes, panelized homes and precut homes, and panel constructed
590 homes consisting of structural insulated panels, shall be taxed at
591 the rate of three percent (3%).

592 (m) From and after July 1, 2008, retail sales of food
593 for human consumption not purchased with food stamps issued by the
594 United States Department of Agriculture, or other federal agency,
595 but which would be exempt under paragraph (o) of Section 27-65-111
596 from the taxes imposed by this chapter if the food items were



597 purchased with food stamps, shall be taxed as provided for in
598 Section 27-65-26.

599 (2) From and after January 1, 1995, retail sales of private
600 carriers of passengers and light carriers of property, as defined
601 in Section 27-51-101, shall be taxed an additional two percent
602 (2%).

603 (3) In lieu of the tax levied in subsection (1) of this
604 section, there is levied on retail sales of truck-tractors and
605 semitrailers used in interstate commerce and registered under the
606 International Registration Plan (IRP) or any similar reciprocity
607 agreement or compact relating to the proportional registration of
608 commercial vehicles entered into as provided for in Section
609 27-19-143, a tax at the rate of three percent (3%) of the portion
610 of the sale that is attributable to the usage of such
611 truck-tractor or semitrailer in Mississippi. The portion of the
612 retail sale that is attributable to the usage of such
613 truck-tractor or semitrailer in Mississippi is the retail sales
614 price of the truck-tractor or semitrailer multiplied by the
615 percentage of the total miles traveled by the vehicle that are
616 traveled in Mississippi. The tax levied pursuant to this
617 subsection (3) shall be collected by the State Tax Commission from
618 the purchaser of such truck-tractor or semitrailer at the time of
619 registration of such truck-tractor or semitrailer.

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

623 **SECTION 6.** The purpose of Sections 6 through 18 of this act
624 is to:

625 (a) Prevent nonsettling-manufacturers from undermining
626 this state's policy of discouraging underage smoking by offering
627 cigarettes and cigarette tobacco products at prices that are
628 substantially below the prices of cigarettes and cigarette tobacco
629 products of other manufacturers;



630 (b) Protect the tobacco settlement agreement, and
631 funding, which has been reduced because of the growth of sales of
632 nonsettling-manufacturer cigarettes and cigarette tobacco
633 products, for programs that are funded wholly or partly by
634 payments to this state under the tobacco settlement agreement and
635 recoup for this state settlement payment revenue lost because of
636 sales of nonsettling-manufacturer cigarettes and cigarette tobacco
637 products;

638 (c) Provide funding to enforce and administer Sections
639 6 through 18 of this act and any legislation relating to
640 nonsettling-manufacturers; and

641 (d) Provide funding for any other purpose the
642 Legislature determines.

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

644 (a) "Brand family" means each style of cigarettes or
645 cigarette tobacco products sold under the same trademark and
646 differentiated from one another by means of additional modifiers,
647 including "menthol," "lights," "kings," and "100s." The term
648 includes any style of cigarettes or cigarette tobacco products
649 that have a brand name, trademark, logo, symbol, motto, selling
650 message, recognizable pattern of colors, or other indication of
651 product identification that is identical to, similar to, or
652 identifiable with a previously known brand of cigarettes or
653 cigarette tobacco products.

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

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

659 (ii) Tobacco, in any form, that is functional in a
660 product that, because of the product's appearance, the type of
661 tobacco used in the filler, or the product's packaging and



662 labeling, is likely to be offered to or purchased by a consumer as
663 a cigarette; or

664 (iii) A roll of tobacco wrapped in any substance
665 containing tobacco that, because of the product's appearance, the
666 type of tobacco used in the filler, or the product's packaging and
667 labeling, is likely to be offered to or purchased by a consumer as
668 a cigarette.

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

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

676 (e) "Manufacturer" means a person that manufactures,
677 fabricates or assembles cigarettes for sale or distribution. For
678 purposes of Sections 6 through 18 of this act, the term includes a
679 person that is the first importer into the United States of
680 cigarettes and cigarette tobacco products manufactured outside the
681 United States.

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

685 (g) "Nonsettling-manufacturer" means a manufacturer of
686 cigarettes that did not sign the tobacco settlement agreement.

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

690 (i) "Nonsettling-manufacturer cigarette tobacco
691 products" means cigarette tobacco products manufactured,
692 fabricated, assembled or imported by a nonsettling-manufacturer.

693 (j) "Tobacco settlement agreement" means the
694 Comprehensive Settlement Agreement and Release filed December 29,



695 1997, in the Chancery Court of Jackson County, State of
696 Mississippi, in the case styled In Re Mike Moore, Attorney
697 General, ex rel. State of Mississippi Tobacco Litigation, Cause
698 No. 94-1429, and all subsequent amendments thereto.

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

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

703 (a) Nonsettling-manufacturer cigarettes if a stamp is
704 required to be affixed to a package of those cigarettes under the
705 Tobacco Tax Law;

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

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

712 (2) The fee imposed by Sections 6 through 18 of this act
713 does not apply to cigarettes or cigarette tobacco products that
714 are included in computing payments due to be made by a settling
715 manufacturer under the tobacco settlement agreement.

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

719 (4) Except as otherwise provided by Sections 6 through 18 of
720 this act, the fee imposed by Sections 6 through 18 of this act is
721 imposed, collected, paid, administered and enforced in the same
722 manner, taking into account that the fee is imposed on
723 nonsettling-manufacturers, as the taxes imposed by the Tobacco Tax
724 Law, as appropriate.

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



728 (a) Each nonsettling-manufacturer cigarette; and

729 (b) Each nine one-hundredths (0.09) ounce of

730 nonsettling-manufacturer cigarette tobacco product.

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

733 (a) Three percent (3%); or

734 (b) The percentage increase in the most recent annual
735 revised Consumer Price Index for all Urban Consumers, as published
736 by the Federal Bureau of Labor Statistics of the United States
737 Department of Labor.

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

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

744 (a) The number and denominations of stamps affixed to
745 individual packages of nonsettling-manufacturer cigarettes during
746 the preceding month;

747 (b) The number of individual packages of
748 nonsettling-manufacturer cigarettes sold or purchased in this
749 state or otherwise distributed in this state for sale in the
750 United States; and

751 (c) Any other information the commissioner considers
752 necessary or appropriate to determine the amount of the fee
753 imposed by Sections 6 through 18 of this act or to enforce
754 Sections 6 through 18 of this act.

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

758 (3) The requirement to report information under this section
759 shall be enforced in the same manner as the requirement to deliver



760 to or file with the comptroller a report required under the
761 Tobacco Tax Law.

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

765 (a) Compute the amount of the fee imposed by Sections 6
766 through 18 of this act that each nonsettling-manufacturer owes for
767 that reporting period based on that information and any other
768 information available to the commissioner; and

769 (b) Mail to each nonsettling-manufacturer a notice of
770 the amount of fee the manufacturer owes.

771 (2) Not later than the 15th day of the month after the month
772 in which the commissioner mails a nonsettling-manufacturer a
773 notice under subsection (1) of this section, the
774 nonsettling-manufacturer shall send to the commissioner the amount
775 of the fee due according to the notice.

776 **SECTION 12.** (1) Not later than the first day of each month,
777 a nonsettling-manufacturer who is required to pay the fee imposed
778 by Sections 6 through 18 of this act shall certify to the Attorney
779 General that the manufacturer is in compliance with Sections 6
780 through 18 of this act and has paid in full the fee imposed by
781 Sections 6 through 18 of this act.

782 (2) The Attorney General shall develop, maintain and publish
783 on the Attorney General's Internet Web site a directory listing of
784 all nonsettling-manufacturers that have been provided current,
785 accurate and complete certifications. The listing shall also
786 include all manufacturers of cigarettes that signed the tobacco
787 settlement agreement.

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

790 **SECTION 13.** (1) If cigarettes or cigarette tobacco products
791 of a nonsettling-manufacturer are not offered for sale or
792 distribution in this state on September 1, 2008, the



793 nonsettling-manufacturer may not offer those cigarettes or
794 cigarette tobacco products for sale or distribution in this state
795 after that date unless the manufacturer first prepays the fee
796 imposed by Sections 6 through 18 of this act for sales of
797 cigarettes and cigarette tobacco products that will occur in the
798 first calendar month in which they are sold or distributed in this
799 state.

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

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

804 (i) The number of cigarettes the commissioner
805 reasonably projects that the nonsettling-manufacturer will sell or
806 distribute in this state during that calendar month; and

807 (ii) Each nine one-hundredths (0.09) ounce of
808 nonsettling-manufacturer cigarette tobacco products the
809 commissioner reasonably projects that the nonsettling-manufacturer
810 will sell or distribute in this state during that calendar month;
811 or

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

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

817 (4) The commissioner may require a nonsettling-manufacturer
818 to provide any information reasonably necessary to determine the
819 prepayment amount.

820 (5) The commissioner shall establish procedures to:

821 (a) Reimburse a nonsettling-manufacturer if the actual
822 sales or distributions in the first calendar month are less than
823 the projected sales or distributions; and



824 (b) Require additional payments if the actual sales or
825 distributions in the first calendar month are greater than the
826 projected sales or distributions.

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

832 **SECTION 14.** (1) In addition to prepaying the fee required
833 by Section 13 of this act, a nonsettling-manufacturer described by
834 Section 13(1) of this act shall, before the date the cigarettes or
835 cigarette tobacco products are offered for sale or distribution in
836 this state, provide to the Attorney General on a form prescribed
837 by the Attorney General:

838 (a) The nonsettling-manufacturer's complete name,
839 address and telephone number;

840 (b) The date that the nonsettling-manufacturer will
841 begin offering cigarettes or cigarette tobacco products for sale
842 or distribution in this state;

843 (c) The names of the brand families of the cigarettes
844 or cigarette tobacco products that the nonsettling-manufacturer
845 will offer for sale or distribution in this state;

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

848 (e) The name, address, telephone number and signature
849 of an officer of the nonsettling-manufacturer attesting to all of
850 the included information.

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

853 **SECTION 15.** (1) Cigarettes and cigarette tobacco products
854 of a nonsettling-manufacturer that has not complied with Sections
855 6 through 18 of this act, including full payment of the fee
856 imposed by Sections 6 through 18 of this act, shall be treated as



857 tobacco for which the tax assessed by the Tobacco Tax Law, has not
858 been paid, and the manufacturer is subject to all penalties
859 imposed by that act for violations of that act.

860 (2) The commissioner shall provide to a
861 nonsettling-manufacturer and each distributor authorized to affix
862 tax stamps pursuant to the Tobacco Tax Act, a notice of
863 noncompliance with Sections 6 through 18 of this act if the
864 manufacturer:

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

867 (b) Is not included on the list described by Section
868 12(2) of this act.

869 (3) If a nonsettling-manufacturer does not appear in the
870 Attorney General's directory required by Section 12(2) of this
871 act, or upon receipt of the notice of noncompliance described in
872 subsection (2) of this section with respect to a
873 nonsettling-manufacturer, no distributor may, with respect to
874 cigarettes manufactured by such nonsettling-manufacturer:

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

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

878 (c) Otherwise purchase, sell or distribute cigarettes
879 manufactured by such nonsettling-manufacturer in this state.

880 **SECTION 16.** Any nonsettling-manufacturer that complies with
881 the provisions of Sections 6 through 18 of this act shall be
882 entitled to the same protections from civil liability as set forth
883 in the tobacco settlement agreement for settling manufacturers
884 only if the nonsettling-manufacturer also strictly follows the
885 mandates and restrictions in the tobacco settlement agreement.

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



889 **SECTION 18.** (1) Not later than September 30, 2008, a
890 nonsettling-manufacturer that is offering cigarettes or cigarette
891 tobacco products for sale or distribution in this state on
892 September 1, 2008, shall provide to the Attorney General on a form
893 prescribed by the Attorney General:

894 (a) The nonsettling-manufacturer's complete name,
895 address and telephone number;

896 (b) The date that the nonsettling-manufacturer began
897 offering cigarettes or cigarette tobacco products for sale or
898 distribution in this state;

899 (c) The names of the brand families of the cigarettes
900 or cigarette tobacco products that the nonsettling-manufacturer
901 offers for sale or distribution in this state;

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

904 (e) The name, address, telephone number and signature
905 of an officer of the nonsettling-manufacturer attesting to all of
906 the included information.

907 (2) The Attorney General shall make the information provided
908 under subsection (1) of this section available to the
909 commissioner.

910 **SECTION 19.** This act shall take effect and be in force from
911 and after July 1, 2008.

