

By: Representative Smith (39th)

To: Ways and Means

HOUSE BILL NO. 799

1 AN ACT TO AMEND SECTIONS 27-7-23 AND 27-7-24, MISSISSIPPI
2 CODE OF 1972, TO AUTHORIZE THE USE OF CERTAIN ALTERNATIVE METHODS
3 TO APPORTION, FOR INCOME TAX PURPOSES, THE INCOME OF CORPORATIONS
4 OR ORGANIZATIONS HAVING BUSINESS INCOME FROM ACTIVITY THAT IS
5 TAXABLE WITHIN AND WITHOUT THIS STATE; TO PROVIDE THAT IN CASES
6 INVOLVING SUCH CORPORATIONS AND ORGANIZATIONS AND IN CASES
7 INVOLVING FINANCIAL INSTITUTIONS, THE PARTY REQUESTING OR
8 REQUIRING THE ALTERNATIVE METHOD SHALL BEAR THE BURDEN OF PROVING
9 BY CLEAR AND CONVINCING EVIDENCE IN ANY ADMINISTRATIVE OR JUDICIAL
10 PROCEEDING THAT THE STANDARD METHODS OF APPORTIONMENT DO NOT
11 FAIRLY REPRESENT THE TAXPAYER'S ACTIVITY; TO AMEND SECTIONS
12 27-7-37, 27-7-51, 27-7-53, 27-7-315, 25-7-327 AND 27-7-345,
13 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE COMMISSIONER OF
14 REVENUE MAY NOT REQUIRE A CORPORATION THAT IS AFFILIATED WITH ONE
15 OR MORE CORPORATIONS THAT ARE NOT TAXABLE UNDER THE INCOME TAX LAW
16 TO FILE A COMBINED RETURN UNTIL REGULATIONS HAVE BEEN ENACTED
17 SPECIFYING THE CRITERIA AND CIRCUMSTANCES THAT FORM THE BASIS FOR
18 MEETING THE CLEAR AND CONVINCING EVIDENCE STANDARD REQUIRED TO
19 SUPPORT A CONCLUSION THAT INTERCOMPANY TRANSACTIONS OF SUCH
20 CORPORATION HAVE RESULTED IN THE SHIFTING OF TAXABLE INCOME FROM A
21 TAXPAYER TO ANOTHER MEMBER OR MEMBERS OF ITS AFFILIATED GROUP NOT
22 SUBJECT TO TAX UNDER THIS ARTICLE, OR THAT THE INTERCOMPANY
23 TRANSACTIONS OF SUCH CORPORATIONS HAVE RESULTED IN THE SHIFTING OF
24 TAXABLE INCOME BETWEEN MEMBERS OF THE INCLUDED AFFILIATED GROUP;
25 TO PROHIBIT THE COMMISSIONER OF REVENUE FROM ASSESSING CERTAIN
26 PENALTIES ARISING FROM REQUIRING A COMBINED RETURN EXCEPT UPON
27 CLEAR AND CONVINCING EVIDENCE THAT THE TAXPAYER'S METHOD WAS
28 WITHOUT REASONABLE BASIS, OR THAT IT IS BEYOND A REASONABLE DOUBT
29 THE TAXPAYER FILED A FALSE OR FRAUDULENT RETURN WITH INTENT TO
30 EVADE THE INCOME TAX; TO PROVIDE THAT ONE OF THE OPTIONS FOR
31 DELIVERING CERTAIN NOTICES TO THE TAXPAYER UNDER THE INCOME TAX
32 LAW SHALL BE CERTIFIED MAIL, RETURN RECEIPT REQUESTED, RATHER THAN
33 REGULAR MAIL, AND TO PROVIDE THAT THE PERIOD OF TIME TO RESPOND TO
34 SUCH NOTICES SHALL BEGIN FROM THE DATE OF MAILING OR HAND



35 DELIVERING THE NOTICE; TO REDUCE CERTAIN INTEREST PENALTIES THAT
36 MAY BE IMPOSED BY THE COMMISSIONER OF REVENUE UNDER THE INCOME TAX
37 LAW FROM 1% TO 1/2 OF 1% PER MONTH; TO MAKE THE IMPOSITION OF SUCH
38 PENALTIES DISCRETIONARY; TO APPLY CERTAIN PENALTIES TO THE TAX
39 DEFICIENCY OR DELINQUENCY RATHER THAN THE AMOUNT OF THE TAX; TO
40 PROVIDE THAT A TAXPAYERS FAILURE TO FILE AN APPEAL FOR DENIAL OR
41 REFUND OF OVERPAYMENT BASED ON THE FAILURE OF THE OVERPAYMENT TO
42 BE PAID THE TAXPAYER WITHIN 6 MONTHS, DOES NOT PREJUDICE THE
43 TAXPAYER'S RIGHT TO FILE AN APPEAL UPON A SUBSEQUENT FORMAL
44 DENIAL; TO AMEND SECTION 27-13-23 AND 27-13-25, MISSISSIPPI CODE
45 OF 1972, TO PROVIDE THAT ONE OF THE OPTIONS FOR DELIVERING CERTAIN
46 NOTICES TO THE TAXPAYER UNDER THE FRANCHISE TAX LAW SHALL BE
47 CERTIFIED MAIL, RETURN RECEIPT REQUESTED, RATHER THAN REGULAR
48 MAIL, AND TO PROVIDE THAT THE PERIOD OF TIME TO RESPOND TO SUCH
49 NOTICES SHALL BEGIN FROM THE DATE OF MAILING OR HAND DELIVERING
50 THE NOTICE; TO REDUCE CERTAIN INTEREST PENALTIES THAT MAY BE
51 IMPOSED BY THE COMMISSIONER OF REVENUE UNDER THE FRANCHISE TAX LAW
52 FROM 1% TO 1/2% OF 1% PER MONTH; TO MAKE THE IMPOSITION OF SUCH
53 PENALTIES DISCRETIONARY; TO APPLY CERTAIN PENALTIES TO THE TAX
54 DEFICIENCY OR DELINQUENCY RATHER THAN THE AMOUNT OF THE TAX; TO
55 AMEND SECTIONS 27-65-3, 27-65-31, 27-65-35, 27-65-37 AND 27-65-39,
56 MISSISSIPPI CODE OF 1972, TO INCLUDE WITHIN THE DEFINITION OF THE
57 TERM "TAXPAYER" UNDER THE SALES TAX LAW, IN THE CASE OF A CLAIM
58 FOR A REFUND OF OVERPAID TAXES, ANY PERSON WHO PAID A TAX TO A
59 SELLER OR OTHER PARTY AND BORE THE ECONOMIC BURDEN OF THE TAX; TO
60 PROVIDE THAT PENALTIES FOR FAILURE TO REMIT FUNDS COLLECTED BY A
61 SELLER UNDER THE SALES TAX LAW SHALL NOT BE LEVIED UNLESS THE
62 COMMISSIONER PROVES BY CLEAR AND CONVINCING EVIDENCE THAT THE
63 TAXPAYER ACTUALLY COLLECTED THE FUNDS FROM THE PURCHASER AND
64 KNOWINGLY AND INTENTIONALLY FAILED TO REMIT THEM; TO PROVIDE THAT
65 ONE OF THE OPTIONS FOR DELIVERING CERTAIN NOTICES TO THE TAXPAYER
66 UNDER THE SALES TAX LAW SHALL BE CERTIFIED MAIL, RETURN RECEIPT
67 REQUESTED, RATHER THAN REGULAR MAIL, AND TO PROVIDE THAT THE
68 PERIOD OF TIME TO RESPOND TO SUCH NOTICES SHALL BEGIN FROM THE
69 DATE OF MAILING OR HAND DELIVERING THE NOTICE; TO REDUCE CERTAIN
70 INTEREST PENALTIES THAT MAY BE IMPOSED BY THE COMMISSIONER OF
71 REVENUE UNDER THE SALES TAX LAW FROM 1% TO 1/2% OF 1% PER MONTH;
72 TO MAKE THE IMPOSITION OF SUCH PENALTIES DISCRETIONARY; TO APPLY
73 CERTAIN PENALTIES TO THE TAX DEFICIENCY OR DELINQUENCY RATHER THAN
74 THE AMOUNT OF THE TAX; TO PROVIDE THAT IN REGARD TO THE PENALTY
75 FOR DEFICIENT OR DELINQUENT SALES TAX THAT IS INTENTIONAL, A
76 TAXPAYER'S PURPORTED DISREGARD OF INSTRUCTIONS GIVEN THROUGH AN
77 AUDIT SHALL NOT BE A BASIS FOR THE IMPOSITION OF THE PENALTY, AND
78 A TAXPAYER'S GOOD-FAITH CHALLENGE TO THE CONSTITUTIONALITY OR
79 LEGALITY OF A LAW OR REGULATION SHALL PRECLUDE THE IMPOSITION OF
80 THE PENALTY; TO AMEND SECTIONS 27-77-1, 27-77-5 AND 27-77-7,
81 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT "MAIL," "MAILED" OR
82 "MAILING" UNDER THE LAWS GOVERNING THE BOARD OF TAX APPEALS SHALL
83 MEAN CERTIFIED MAIL, RETURN RECEIPT REQUESTED, RATHER THAN
84 FIRST-CLASS MAIL; TO EXPAND THE ACTIONS THAT MAY BE APPEALED TO
85 THE BOARD OF TAX APPEALS; TO PROVIDE THAT IF THE DEPARTMENT OF



86 REVENUE'S BOARD OF REVIEW DOES NOT ISSUE AN ORDER WITHIN 6 MONTHS
87 OF A HEARING, THE TAXPAYER MAY TREAT THE FAILURE TO ISSUE AN ORDER
88 AS A DENIAL OF THE RELIEF REQUESTED IN THE HEARING AND APPEAL TO
89 THE BOARD OF TAX APPEALS; TO PROVIDE THAT AT HEARINGS BEFORE THE
90 BOARD OF TAX APPEALS, THE BOARD SHALL GIVE NO DEFERENCE TO THE
91 DECISION OF THE DEPARTMENT OF REVENUE OR BOARD OF REVIEW OR ITS
92 INTERPRETATION OF ANY LAW THAT IS NOT CONTAINED WITHIN OFFICIAL
93 REGULATIONS OF THE DEPARTMENT OF REVENUE, BUT IT SHALL TRY THE
94 CASE DE NOVO; TO PROVIDE THAT IF THE BOARD OF TAX APPEALS DOES NOT
95 ISSUE AN ORDER WITHIN 9 MONTHS OF A HEARING, THE TAXPAYER MAY
96 TREAT THE FAILURE TO ISSUE AN ORDER AS A DENIAL OF THE RELIEF
97 REQUESTED IN THE HEARING AND APPEAL TO THE CHANCERY COURT; TO
98 PROVIDE THAT ANY APPEAL OR OTHER FILING WITH THE BOARD OF REVIEW
99 OR BOARD OF TAX APPEALS SHALL BE CONSIDERED TIMELY IF IT IS HAND
100 DELIVERED, MAILED, POSTMARKED, SHIPPED, OR ELECTRONICALLY
101 TRANSMITTED VIA ELECTRONIC MAIL, ELECTRONIC FILING OR FACSIMILE BY
102 MIDNIGHT OF THE DUE DATE FOR THE FILING; TO REMOVE THE REQUIREMENT
103 THAT A TAXPAYER MUST POST A BOND TO APPEAL DECISIONS OF THE BOARD
104 OF TAX APPEALS; AND FOR RELATED PURPOSES.

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

106 **SECTION 1.** Section 27-7-23, Mississippi Code of 1972, is
107 amended as follows:

108 27-7-23. (a) **Definitions.**

109 (1) "Doing business" means the operation of any
110 business enterprise or activity in Mississippi for financial
111 profit or economic gain, including, but not limited to, the
112 following:

113 (A) The regular maintenance of an office or other
114 place of business in Mississippi; or

115 (B) The regular maintenance in Mississippi of an
116 inventory of merchandise or material for sale, distribution or
117 manufacture, regardless of whether kept on the premises of the
118 taxpayer or otherwise; or

119 (C) The selling or distributing of merchandise to
120 customers in Mississippi directly from a company-owned or operated



121 vehicle when title to the merchandise is transferred from the
122 seller or distributor to the customer at the time of the sale or
123 distribution (transient selling); or

124 (D) The regular rendering of service to clients or
125 customers in Mississippi in person or by agents or employees; or

126 (E) The owning, renting or operating of business
127 or income-producing property, real or personal, in Mississippi; or

128 (F) The performing of contracts, prime or sublet
129 work, for the construction, repair or renovation of real or
130 personal property.

131 (2) "Business income" means income of any type or
132 class, and from any activity that meets the relationship described
133 in the transactional test or the functional test described in this
134 paragraph (2). The classification of income by occasionally used
135 labels, including, but not limited to, manufacturing income,
136 compensation for services, sales income interest, dividends,
137 rents, royalties, gains, operating income, and nonoperating income
138 shall not be considered when determining whether income is
139 business or nonbusiness income. All income of the taxpayer is
140 business income unless clearly classifiable as nonbusiness income.
141 A taxpayer seeking to overcome a classification of income as
142 business income must establish by a preponderance of the evidence
143 that the income has been incorrectly classified.



144 (A) Transactional test. Business income includes
145 income arising from transactions and activity in the regular
146 course of the taxpayer's trade or business.

147 (i) If the transaction or activity is in the
148 regular course of the taxpayer's trade or business, part of which
149 trade or business is conducted within Mississippi, the resulting
150 income of the transaction or activity is business income for
151 Mississippi. Income may be business income even though the actual
152 transaction or activity that gives rise to the income does not
153 occur in Mississippi.

154 (ii) For a transaction or activity to be in
155 the regular course of the taxpayer's trade or business, the
156 transactions or activity need not be one that frequently occurs in
157 the trade or business, although most frequently occurring
158 transactions or activities shall be considered to be in the
159 regular course of a trade or business. It is sufficient to
160 classify a transaction or activity as being in the regular course
161 of a trade or business if it is reasonable to conclude
162 transactions of that type are customary in the kind of trade or
163 business being conducted or are within the scope of what the trade
164 or business does.

165 (B) Functional test. Business income includes
166 income from tangible and intangible property if the acquisition,
167 management and/or disposition of the property constitute integral
168 parts of the taxpayer's regular trade or business operation.



169 (i) Under the functional test, business
170 income need not be derived from transactions or activities that
171 are in the regular course of the taxpayer's own particular trade
172 or business. It shall be sufficient if the property from which
173 the income is derived is or was an integral, functional, necessary
174 or operative component of the taxpayer's trade or business
175 operations, part of which trade or business is or was conducted
176 within this state.

177 (ii) Income that is derived from isolated
178 sales, leases, assignments, licenses and other infrequently
179 occurring dispositions, transfers or transactions involving
180 property, including transactions made in liquidation or the
181 winding up of business is business income if the property is or
182 was used in the taxpayer's trade or business operation. Income
183 from the licensing of intangible assets, such as patents,
184 copyrights, trademarks, service marks, goodwill, know-how, trade
185 secrets and similar assets, that were developed or acquired for
186 use by the taxpayer in his trade or business operations,
187 constitute business income whether the licensing itself
188 constituted the operation of a trade or business and whether the
189 taxpayer remains in the same trade or business from or for which
190 the intangible asset was developed or acquired.

191 (iii) Under the functional test, income from
192 intangible property is business income when the intangible
193 property serves an operating function, as opposed to solely an



194 investment function. The relevant inquiry shall focus on whether
195 the property is or was held in furtherance of the taxpayer's trade
196 or business, that is, on the objective characteristics of the
197 intangible property's use or acquisition and its relation to the
198 taxpayer and the taxpayer's activities. The functional test is
199 not satisfied where the holding of the property is limited solely
200 to an investment function as in the case where the holding of the
201 property is limited to mere financial betterment of the taxpayer
202 in general.

203 (iv) If the property is or was held in
204 furtherance of the taxpayer's trade or business beyond mere
205 financial betterment, then income from the property may be
206 business income even though the actual transaction or activity
207 involving the property that gives rise to the income does not
208 occur in Mississippi.

209 (v) If, with respect to an item of property,
210 a taxpayer takes a deduction from business income that is
211 apportioned to Mississippi, or includes that item of property in
212 the property factor, it is presumed that the item of property is
213 or was integral to the taxpayer's trade or business operations.
214 No presumption arises from the absence of any of this action.

215 (vi) Application of the functional test is
216 generally unaffected by the form of the property. Income arising
217 from intangible property is business income when the intangible
218 property itself or the underlying value of the intangible property



219 is or was an integral, functional, necessary or operative
220 component to the taxpayer's trade or business operation.
221 Therefore, while treatment of income derived from transactions
222 involving intangible property as business income may be supported
223 by a finding that the issuer of the intangible property and the
224 taxpayer are engaged in the same trade or business, establishment
225 of such a relationship is not the exclusive basis for concluding
226 that the income constitutes business income. It is sufficient to
227 support a finding of business income if the holding of the
228 intangible property served an operational rather than an
229 investment function.

230 (3) "Nonbusiness income" means all income that does not
231 meet the definition of business income.

232 (4) "Commercial domicile" means the principal place
233 from which the trade or business of the taxpayer is directed or
234 managed.

235 (5) "State" means any state of the United States, the
236 District of Columbia, the Commonwealth of Puerto Rico, any
237 territory or possession of the United States, and any foreign
238 country or political subdivision thereof.

239 (b) **Nonresident individuals, partnerships, trusts and**
240 **estates.**

241 (1) The tax imposed by this article shall apply to the
242 entire net income of a taxable nonresident derived from
243 employment, trade, business, professional, personal service or



244 other activity for financial gain or profit, performed or carried
245 on within Mississippi, including the rental of real or personal
246 property located within this state or for use herein and including
247 the sale or exchange or other disposition of tangible or
248 intangible property having a situs in Mississippi.

249 (2) Income derived from trade, business or other
250 commercial activity shall be taxed to the extent that it is
251 derived from such activity within this state. Mississippi net
252 income shall be determined in the manner prescribed by the
253 commissioner for the allocation and/or apportionment of income of
254 foreign corporations having income from sources both within and
255 without the state.

256 (3) A taxable nonresident shall be allowed to deduct
257 expenses, interest, taxes, losses, bad debts, depreciation and
258 similar business expenses only to the extent that they are
259 allowable under this article and are attributable to the
260 production of income allocable to and taxable by the State of
261 Mississippi. As to allowable deductions essentially personal in
262 nature, such as contributions to charitable organizations, medical
263 expenses, taxes, interest and the optional standard deduction,
264 such taxable nonresident shall be allowed deductions therefor in
265 the ratio that the net income from sources within Mississippi
266 bears to the total net income from all sources of such taxable
267 nonresident, computed as if such taxable nonresident * * * was a
268 resident of Mississippi.



269 (c) **Foreign corporations, associations, organizations and**
270 **other entities.**

271 (1) Corporations and organizations required to file.
272 All foreign corporations and other organizations which have
273 obtained a certificate of authority from the Secretary of State to
274 do business in Mississippi, or corporations or organizations which
275 are in fact doing business in Mississippi, are subject to the
276 income tax levy and are required to file annual income tax returns
277 unless the corporation or organization is specifically exempt from
278 tax by this article.

279 (2) Allocation and apportionment of income.

280 (A) Except as provided in Sections 27-7-24,
281 27-7-24.1, 27-7-24.3, 27-7-24.5 and 27-7-24.7, Mississippi Code of
282 1972, any corporation or organization having business income from
283 business activity which is taxable both within and without this
284 state shall allocate and apportion its net business income as
285 prescribed by regulations enacted by the commissioner. If the
286 business income of the corporation is derived solely from property
287 owned or business done in this state and the corporation is not
288 taxable in another state, the entire business income shall be
289 allocated to this state. A corporation is taxable in another
290 state if, in that state the corporation is subject to a net income
291 tax, or a franchise tax measured by net income, or if that state
292 has jurisdiction to subject the corporation to a net income tax



293 regardless of whether the state does or does not subject the
294 corporation to a net income tax.

295 (B) If the allocation and apportionment provisions
296 of this section or regulations enacted by the commissioner do not
297 fairly represent the extent of the taxpayer's business activity in
298 this state, the taxpayer may petition for, or the commissioner may
299 require, in respect to all or any part of the taxpayer's business
300 activity, if reasonable:

301 (i) Separate accounting;

302 (ii) The exclusion of any one or more of the
303 factors;

304 (iii) The inclusion of one or more additional
305 factors which will fairly represent the taxpayer's business
306 activity in this state; or

307 (iv) The employment of any other method to
308 effectuate an equitable allocation and apportionment of the
309 taxpayer's income.

310 (C) In any instance in which a taxpayer requests
311 or the commissioner requires the use of any of apportionment
312 methods in subparagraph (B) of this paragraph, the party
313 requesting or requiring the method shall bear the burden of
314 proving by clear and convincing evidence in any administrative or
315 judicial proceeding that the methods set forth in this section or
316 the commissioner's regulations do not fairly represent the extent
317 of the taxpayer's business activity in this state and that the



318 proposed method more fairly represents that activity. The
319 alternative apportionment authority specified in this subparagraph
320 is intended to be invoked only in limited and unique, nonrecurring
321 circumstances where the standard apportionment provisions
322 contained in the statutes and regulations produce incongruous
323 results.

324 (D) The commissioner shall be prohibited from
325 assessing any penalties related to a deficiency arising from
326 requiring the use of an alternative apportionment method under
327 subparagraph (B) of this paragraph unless the commissioner shall
328 establish by clear and convincing evidence that the taxpayer's
329 method was without reasonable basis, or that beyond a reasonable
330 doubt such taxpayer filed a false or fraudulent return with the
331 intent to evade tax.

332 (3) Nonbusiness income. Rents and royalties from real
333 or tangible personal property, capital gains, interest, dividends,
334 or patent or copyright royalties, to the extent that they
335 constitute nonbusiness income, shall be allocated as follows:

336 (A) Net rents and royalties from real property are
337 allocable to the state in which the property is located.

338 (B) Net rents and royalties from tangible personal
339 property are allocable to the state in which the property is used,
340 or to this state in their entirety if the corporation's commercial
341 domicile is in this state and the corporation is not organized



342 under the laws of or taxable in the state in which the property is
343 utilized.

344 (C) Capital gains and losses from sales of real
345 property are allocable to the state in which the property is
346 located.

347 (D) Capital gains and losses from sales of
348 tangible personal property are allocable to the state in which the
349 property is located, or to this state if the corporation's
350 commercial domicile is in this state and the corporation is not
351 taxable in the state in which the property had a situs.

352 (E) Capital gains and losses from sales of
353 intangible personal property are allocable to the state of the
354 corporation's commercial domicile.

355 (F) Interest and dividends are allocable to the
356 state of the corporation's commercial domicile.

357 (G) Patent and copyright royalties are allocable
358 to the state in which the patent or copyright is utilized by the
359 payer, or to this state if and to the extent that the patent or
360 copyright is utilized by the payer in a state in which the
361 corporation is not taxable and the corporation's commercial
362 domicile is in this state.

363 (H) Any other nonbusiness income shall be
364 allocated as prescribed by the commissioner.

365 (I) All expenses connected with earning
366 nonbusiness income, such as interest, taxes, general and



367 administrative expenses and such other expenses relating to the
368 production of nonbusiness income, shall be deducted from gross
369 nonbusiness income. Nonbusiness interest expense shall be
370 computed by using the ratio of nonbusiness assets to total assets
371 applied to total interest expense.

372 (d) **Foreign lenders.**

373 (1) In the case of any foreign lender, (corporation,
374 association, organization, individual, partnership, trusts or
375 estates), other than: (A) a foreign insurance company subject to
376 certification by the Commissioner of Insurance, as provided by
377 Section 83-21-1 et seq.; or (B) a foreign lender qualified under
378 the general laws of this state to do business herein; or (C) a
379 foreign lender which maintains an office or place of business
380 within this state; or (D) lenders that sold properties in this
381 state and financed such sale and reported on the installment
382 method, interest income received or accrued on or after January 1,
383 1977, from loans secured by real estate or from lending on the
384 security of real estate located within this state shall be
385 excluded from Mississippi gross income and exempt from the
386 Mississippi income tax levy and the reporting requirements.

387 (2) In the case of any foreign lender exempted in
388 paragraph (1) of this subsection, interest income received on any
389 loan finalized or consummated after January 1, 1977, shall be
390 excluded from Mississippi gross income and the net profits derived



391 therefrom shall be exempt from the Mississippi income tax levy for
392 the life of such loan.

393 (e) **Insurance companies.** Insurance companies, other than
394 life insurance companies, deriving premium income from within and
395 without the state, may determine their Mississippi net income from
396 underwriting by apportioning to this state a part of their total
397 net underwriting income by such processes or formulas of general
398 apportionment as are prescribed by the commissioner; provided that
399 a company adopting this method of reporting for any year must
400 adhere to said method of reporting for subsequent years, unless
401 permission is granted by the commissioner to change to a different
402 method of reporting; and provided that all affiliated companies of
403 the same group shall use the same method of reporting.

404 (f) **Bond requirements.** Any individual or corporation
405 subject to the tax imposed by this article, engaged in the
406 business of performing contracts which may require the payment of
407 net income taxes, may be required by the commissioner, before
408 entering into the performance of any contract or contracts the
409 consideration of which is more than Ten Thousand Dollars
410 (\$10,000.00), to execute and file a good and valid bond with a
411 surety company authorized to do business in this state, or with
412 sufficient sureties to be approved by the commissioner,
413 conditioned that all taxes which may accrue to the State of
414 Mississippi will be paid when due. Provided, however, that such
415 bond shall not exceed five percent (5%) of the total contracts



416 entered into during the taxable period, and, provided further,
417 that any taxpayer, in lieu of furnishing such bond, may pay the
418 maximum sum required herein as advance payment of taxes due on the
419 net income realized from any contract or contracts performed or
420 completed in this state.

421 **SECTION 2.** Section 27-7-24, Mississippi Code of 1972, is
422 amended as follows:

423 27-7-24. (1) Except as otherwise specifically provided, a
424 financial institution whose business activity is taxable both
425 within and without this state shall allocate and apportion its net
426 income as provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3,
427 27-7-24.5 and 27-7-24.7, Mississippi Code of 1972. All items of
428 nonbusiness income (income which is not includable in the
429 apportionable income tax base) shall be allocated pursuant to the
430 provisions of Section 27-7-23, Mississippi Code of 1972. A
431 financial institution organized under the laws of a foreign
432 country, the Commonwealth of Puerto Rico, or a territory or
433 possession of the United States whose effectively connected
434 income, as defined under the federal Internal Revenue Code, as in
435 effect January 1, 1996, is taxable both within this state and
436 within another state, other than the state in which it is
437 organized, shall allocate and apportion its net income as provided
438 in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and
439 27-7-24.7, Mississippi Code of 1972.



440 (2) All business income (income which is includable in the
441 apportionable income tax base) shall be apportioned to this state
442 by multiplying such income by the apportionment percentage. The
443 apportionment percentage is determined by adding the taxpayer's
444 receipts factor (as described in Section 27-7-24.3), property
445 factor (as described in Section 27-7-24.5), and payroll factor (as
446 described in 27-7-24.7) together and dividing the sum by three
447 (3). If one (1) of the factors is missing, the two (2) remaining
448 factors are added and the sum is divided by two (2). If two (2)
449 of the factors are missing, the remaining factor is the
450 apportionment percentage. A factor is missing if both its
451 numerator and denominator are zero (0), but is not missing merely
452 because its numerator is zero (0).

453 (3) Each factor shall be computed according to the method of
454 accounting (cash or accrual basis) used by the taxpayer for the
455 taxable year.

456 (4) If the allocation and apportionment provisions of
457 Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and 27-7-24.7 do
458 not fairly represent the extent of the taxpayer's business
459 activity in this state, the taxpayer may petition for or the
460 commissioner may require, in respect to all or any part of the
461 taxpayer's business activity, if reasonable:

- 462 (a) Separate accounting;
- 463 (b) The exclusion of any one or more of the factors;



464 (c) The inclusion of one or more additional factors
465 which will fairly represent the taxpayer's business activity in
466 this state; or

467 (d) The employment of any other method to effectuate an
468 equitable allocation and apportionment of the taxpayer's income.

469 In any instance in which a taxpayer requests or the
470 commissioner requires the use of any of the alternative
471 apportionment methods in this subsection, the party requesting or
472 requiring the method shall bear the burden of proving by clear and
473 convincing evidence in any administrative or judicial proceeding
474 that the methods set forth in Sections 27-7-24, 27-7-24.1,
475 27-7-24.3, 27-7-24.5 and 27-7-24.7 do not fairly represent the
476 extent of the taxpayer's business activity in this state and that
477 the proposed method more fairly represents that activity. The
478 alternative apportionment authority specified in this subsection
479 is intended to be invoked only in limited and unique, nonrecurring
480 circumstances where the standard apportionment provisions
481 contained in the statutes and regulations produce incongruous
482 results.

483 (5) The commissioner shall be prohibited from assessing any
484 penalties related to a deficiency arising from requiring the use
485 of an alternative apportionment method under subsection (4) of
486 this section unless the commissioner shall establish by clear and
487 convincing evidence that the taxpayer's method was without



488 reasonable basis, or that beyond a reasonable doubt such taxpayer
489 filed a false or fraudulent return with the intent to evade tax.

490 **SECTION 3.** Section 27-7-37, Mississippi Code of 1972, is
491 amended as follows:

492 27-7-37. (1) Every corporation subject to taxation shall
493 make a separate return, stating specifically the items of its
494 gross income and the deductions and credits allowed by this
495 article. The return shall be signed by either the president, vice
496 president, secretary or treasurer.

497 (2) (a) (i) Two (2) or more members of an affiliated group
498 of corporations, each taxable in Mississippi, may elect to file a
499 combined income tax return. Corporations electing to file
500 combined returns under this section shall determine the
501 Mississippi net business income (or loss) on an individual
502 corporate member basis as required in Section 27-7-23 and, if
503 applicable, Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and
504 27-7-24.7. The Mississippi net business income (or loss) so
505 computed for each individual member shall be combined to determine
506 the Mississippi net business income (or loss) of the combined
507 group of affiliated corporations. To the amount so determined
508 shall be added nonbusiness income of the combined members directly
509 allocable to Mississippi to determine Mississippi taxable income.

510 (ii) The commissioner may require a corporation
511 taxable under this article that is affiliated with one or more
512 corporations that are not taxable under this article to file a



513 combined return with the affiliated corporation or corporations if
514 he * * * establishes by clear and convincing evidence that the
515 intercompany transactions of such taxable corporation have
516 resulted in the shifting of taxable income from itself to another
517 member or members of its affiliated group not subject to tax under
518 this article. Also, the commissioner may require a group of
519 affiliated corporations taxable under this article to file a
520 combined return if he * * * establishes by clear and convincing
521 evidence that the intercompany transactions of such corporations
522 have resulted in the shifting of taxable income between members of
523 the included affiliated group. In the event that such a combined
524 return is required, the net income or loss of each member of the
525 group required to be combined, shall be combined pursuant to
526 regulations prescribed by the commissioner to determine the total
527 combined taxable income and the Mississippi taxable income of the
528 group. The tax imposed by this article shall be computed and
529 assessed upon the Mississippi taxable income of the combined group
530 which shall be treated as the taxpayer.

531 (iii) The commissioner shall not require the
532 filing of a combined return pursuant to the authority granted
533 under subparagraph (ii) of this paragraph until regulations shall
534 have been enacted specifying the criteria and circumstances that
535 form the basis for meeting the clear and convincing evidence
536 standard required to support a conclusion that intercompany
537 transactions of such taxable corporation have resulted in the



538 shifting of taxable income from a taxpayer to another member or
539 members of its affiliated group not subject to tax under this
540 article, or that the intercompany transactions of such
541 corporations have resulted in the shifting of taxable income
542 between members of the included affiliated group.

543 (iv) The commissioner shall be prohibited from
544 assessing any penalties related to a deficiency arising from the
545 exercise of the authority granted under subparagraph (ii) of this
546 paragraph unless the commissioner shall establish by clear and
547 convincing evidence that the taxpayer's method was without
548 reasonable basis, or that beyond a reasonable doubt such taxpayer
549 filed a false or fraudulent return with the intent to evade tax.

550 (b) The privilege to file combined returns shall be
551 limited to members of an affiliated group of corporations which
552 are subject to taxation under the provisions of this article. The
553 privilege of making a combined return may be exercised only if all
554 corporations subject to taxation under this article which were
555 members of the affiliated group at any time during the taxable
556 year consent to a combined return prior to the last day prescribed
557 by law for the filing of such return. The making of a combined
558 return shall be considered as such consent. In the case of a
559 taxable corporation which is a member of the affiliated group for
560 a fractional part of the year, the combined return shall include
561 the income of such corporation for such part of the year as it is
562 a member of the affiliated group.



563 (c) The commissioner shall prescribe such regulations
564 as he may deem necessary in order that the tax liability of any
565 affiliated group of corporations making a combined return and of
566 each corporation in the group, both during and after the period of
567 affiliation, may be returned, determined, computed, assessed,
568 collected and adjusted, in such manner as clearly to reflect the
569 income tax liability and the various factors necessary for the
570 determination of such liability, and in order to prevent avoidance
571 of such tax liability.

572 (d) As used in this article, the term "affiliated
573 group" means one or more corporations connected through stock
574 ownership with a common parent corporation where at least eighty
575 percent (80%) of the voting power of all classes of stock and at
576 least eighty percent (80%) of each class of the nonvoting stock of
577 each of the member corporations, except the common parent
578 corporation, is owned directly by one or more of the other member
579 corporations; and the common parent corporation owns directly
580 stock possessing at least eighty percent (80%) of the voting power
581 of all classes of stock and at least eighty percent (80%) of each
582 class of the nonvoting stock of at least one (1) of the other
583 member corporations. As used in this subsection, the term "stock"
584 does not include nonvoting stock which is limited and preferred as
585 to dividends.

586 (e) If a corporation elects or is required to file
587 returns on a combined basis, all subsequent returns shall be made



588 upon the same basis unless permission to change the basis is
589 granted by the commissioner, or unless the commissioner requires a
590 change in the basis.

591 (3) If any foreign corporation has no office or place of
592 business in this state but has an agent in this state, the returns
593 shall be made by the agent.

594 (4) In the case of a receiver, trustee in bankruptcy, or
595 assignees operating the property or business of a corporation,
596 such receiver, trustee or assignee shall make returns for such
597 corporation in the same manner and form as corporations are
598 required to make returns; and any tax due on the basis of such
599 returns shall be collected in the same manner as if collected from
600 the corporation of whose business or property they have custody or
601 control.

602 (5) A corporation required to include the activity of a
603 disregarded entity for federal income tax purposes shall do
604 likewise for the purpose of computing income for this state.

605 **SECTION 4.** Section 27-7-51, Mississippi Code of 1972, is
606 amended as follows:

607 27-7-51. (1) If, upon examination of a return made under
608 the provisions of this article, it appears that the correct amount
609 of tax is greater or less than that shown in the return, the tax
610 shall be recomputed. Any overpayment of tax so determined shall
611 be credited or refunded to the taxpayer. If the correct amount of
612 tax is greater than that shown in the return of the taxpayer, the



613 commissioner shall make his assessment of additional tax due by
614 certified mail, return receipt requested, or by personal delivery
615 of the assessment to the taxpayer, which assessment shall
616 constitute notice and demand for payment. The taxpayer shall be
617 given a period of sixty (60) days from the date * * * the
618 commissioner mailed or hand delivered the notice in which to pay
619 the additional tax due, including penalty and interest as
620 hereinafter provided, and if the sum is not paid within the period
621 of sixty (60) days, the commissioner shall proceed to collect it
622 under the provisions of Sections 27-7-55 through 27-7-67, provided
623 that within the period of sixty (60) days the taxpayer may appeal
624 to the board of review as provided by law.

625 (2) In the case of an overpayment of tax, interest shall be
626 computed under the provisions of Section 27-7-315. In the case of
627 an underpayment of tax, interest at the rate of * * * one-half of
628 one percent (1/2 of 1%) per month from the due date of the return
629 may be added or assessed in addition to the additional tax due as
630 hereinabove provided in subsection (1) of this section.

631 (3) In case of failure to pay any additional taxes as
632 assessed under this section, there may be added to the additional
633 amount assessed a penalty of one-half of one percent (1/2 of 1%)
634 of the amount of the additional tax if the failure is for not more
635 than one (1) month, with an additional one-half of one percent
636 (1/2 of 1%) for each additional month or fraction thereof during



637 which the failure continues, not to exceed twenty-five percent
638 (25%) in the aggregate.

639 (4) Where the reported net income of a taxpayer is increased
640 by the Internal Revenue Service, * * * and the taxpayer * * *,
641 without action by the commissioner, amends a return filed under
642 this article on the basis of a change in taxable income made by
643 the Internal Revenue Service, and pays the additional tax due
644 within thirty (30) days after agreeing to the federal change (and
645 has received statement of the federal changes to which agreement
646 has been made or payment thereof), * * * the commissioner may add
647 interest to the additional tax at the rate of * * * one-half of
648 one percent (1/2 of 1%) per month from due date of the original
649 return. If the additional tax, based on changes in taxable income
650 by the Internal Revenue Service, is assessed by the commissioner
651 under subsection (1) of this section, in addition to the interest
652 there may be added a penalty of one-half of one percent (1/2 of
653 1%) of the additional tax due if the failure is for not more than
654 one (1) month, with an additional one-half of one percent (1/2 of
655 1%) for each additional month or fraction thereof during which the
656 failure to pay continues, not to exceed twenty-five percent (25%)
657 in the aggregate, unless it is shown that the failure is due to
658 reasonable cause and not due to willful neglect.

659 (5) In the case of a taxpayer who * * * appeals the decision
660 of the Board of Tax Appeals * * * and the tax assessment or a part
661 of the assessment is upheld by the chancery court and/or the



662 Supreme Court, the assessment * * * may bear interest at the rate
663 of * * * one-half of one percent (1/2 of 1%) per month from the
664 due date until paid.

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

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

675 **SECTION 5.** Section 27-7-53, Mississippi Code of 1972, is
676 amended as follows:

677 27-7-53. (1) (a) Except as otherwise provided in this
678 section, if a return is timely filed by the taxpayer but the tax
679 due is not paid, the commissioner shall make his assessment of tax
680 due by certified mail, return receipt requested, or by personal
681 delivery of the assessment to the taxpayer, which assessment shall
682 constitute notice and demand for payment. The taxpayer shall be
683 given a period of sixty (60) days from the date * * * the
684 commissioner mailed or hand delivered the notice in which to pay
685 the tax due, including penalty and interest as hereinafter
686 provided, and if the sum is not paid within the period of sixty



687 (60) days, the commissioner shall proceed to collect it under the
688 provisions of Sections 27-7-55 through 27-7-67 of this article;
689 provided that within the period of sixty (60) days the taxpayer
690 may appeal to the board of review as provided by law.

691 (b) (i) If an individual return is timely filed by the
692 taxpayer and the amount of tax liability (determined without
693 regard to interest, penalties, additions to the tax and additional
694 amounts) of the taxpayer exceeds Seventy-five Dollars (\$75.00) but
695 does not exceed Three Thousand Dollars (\$3,000.00), the taxpayer
696 may request to pay the tax liability through an installment
697 agreement.

698 (ii) If an individual return is timely filed by
699 the taxpayer and the amount of tax liability (determined without
700 regard to interest, penalties, additions to the tax and additional
701 amounts) of the taxpayer exceeds Three Thousand Dollars
702 (\$3,000.00) and the taxpayer has entered into an installment
703 agreement with the Internal Revenue Service to pay federal income
704 taxes on income earned during the same taxable year during which
705 the state income tax liability was incurred, the taxpayer may
706 request to pay the tax liability through an installment agreement.

707 (iii) The taxpayer must file such a request with
708 the return and must provide all information required by the
709 commissioner.

710 (iv) If the commissioner determines a taxpayer is
711 financially unable to pay the tax liability, the commissioner may



712 enter into an agreement to accept payment of the tax liability in
713 installments if:

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

717 a. Failed to file any return required by
718 this chapter,

719 b. Failed to pay any tax required by
720 this chapter, or

721 c. Entered into an installment agreement
722 under this paragraph (b);

723 2. The agreement requires full payment of the
724 tax liability in equal installments within twelve (12) months from
725 the date the return was filed if the tax liability falls within
726 the provisions of subparagraph (i) of this paragraph, or within
727 sixty (60) months from the date the return was filed if the tax
728 liability falls within the provisions of subparagraph (ii) of this
729 paragraph; and

730 3. The taxpayer agrees to comply with the
731 terms of the agreement.

732 (v) Payments made through an installment agreement
733 shall be subject to the interest provisions of subsection (3) of
734 this section.

735 (vi) The commissioner may terminate an installment
736 agreement entered into under this paragraph (b) if he determines



737 the taxpayer provided inaccurate or incomplete information before
738 the agreement was entered into or he believes the collection of
739 the tax to which the agreement relates is in jeopardy.

740 (vii) The commissioner may modify or terminate an
741 installment agreement entered into under this paragraph (b) if the
742 taxpayer fails to:

743 1. Pay any installment due under the
744 agreement;

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

747 3. Provide a statement of financial condition
748 required by the commissioner.

749 (2) If no return is made by a taxpayer required by this
750 chapter to make a return, the commissioner shall determine the
751 taxpayer's liability from the best information available, which
752 determination shall be prima facie correct for the purpose of this
753 article, and the commissioner shall forthwith make an assessment
754 of the tax so determined to be due by certified mail, return
755 receipt requested, or by personal delivery of the assessment to
756 the taxpayer, which assessment shall constitute notice and demand
757 for payment. The taxpayer shall be given a period of sixty (60)
758 days from the date * * * the commissioner mailed or hand delivered
759 the notice in which to pay the tax due, including penalty and
760 interest as hereinafter provided, and if the sum is not paid
761 within the period of sixty (60) days, the commissioner shall



762 proceed to collect it under the provisions of Sections 27-7-55
763 through 27-7-67 of this article; provided that within the period
764 of sixty (60) days the taxpayer may appeal to the board of review
765 as provided by law.

766 (3) Interest at the rate of * * * one-half of one percent
767 (1/2 of 1%) per month from the due date of the return * * * may be
768 added or assessed in addition to the tax due as provided in
769 subsections (1) and (2) of this section.

770 (4) In case of failure to file a return as required by this
771 chapter, there may be added to the amount required to be shown as
772 tax on the return a penalty of five percent (5%) of the total
773 amount of the deficiency or delinquency of the tax if the failure
774 is for not more than one (1) month, with an additional five
775 percent (5%) for each additional month or fraction thereof during
776 which the failure continues, not to exceed twenty-five percent
777 (25%) in the aggregate. The failure to file a return penalty
778 shall not be less than One Hundred Dollars (\$100.00).

779 (5) In case of failure to pay the amount shown as tax on any
780 return specified in subsections (1) and (2) of this section on or
781 before the date prescribed for payment of the tax, determined with
782 regard to any extension of time for payment or installment
783 agreement, or both, there may be added to the amount shown as tax
784 on the return one-half of one percent (1/2 of 1%) of the total
785 amount of the deficiency or delinquency of the tax if the failure
786 is for not more than one (1) month, with an additional one-half of



787 one percent (1/2 of 1%) for each additional month or fraction
788 thereof during which the failure continues, not to exceed
789 twenty-five percent (25%) in the aggregate.

790 **SECTION 6.** Section 27-7-315, Mississippi Code of 1972, is
791 amended as follows:

792 27-7-315. (1) If any overpayment of any tax, interest or
793 penalty levied or provided for by Article 1 of this chapter, or in
794 this article, is not refunded to the taxpayer as provided in
795 Section 27-7-313 within six (6) months after the final date for
796 filing returns as prescribed by law, the taxpayer may treat the
797 failure to refund as a denial of a refund claim and appeal in the
798 manner provided for in Section 27-77-5. A taxpayer's failure to
799 file an appeal based on this deemed denial shall not prejudice or
800 otherwise jeopardize the taxpayer's right to file an appeal upon a
801 subsequent formal denial in the manner provided for in Section
802 27-77-5.

803 (2) If any overpayment of tax as reflected on a return or
804 amended return filed, and verified by the commissioner or
805 determined to be due by the commissioner or commission when no
806 overpayment is shown on a return or amended return, is not
807 refunded within ninety (90) days after (a) the prescribed due date
808 of the return, (b) the date the return is filed, or (c) the date
809 the commissioner * * * determines a refund as being due when no
810 overpayment is shown on a return or amended return (where the
811 overpayment is subsequently discovered upon an examination or



812 review of a return or determined by a court), whichever is later,
813 interest at the rate of * * * one-half of one percent (1/2 of 1%)
814 per month shall be allowed on the overpayment computed for the
815 period after expiration of the ninety-day period provided in this
816 subsection to the date of payment.

817 **SECTION 7.** Section 27-7-327, Mississippi Code of 1972, is
818 amended as follows:

819 27-7-327. Taxpayers subject to the requirements of estimated
820 tax payments for an income year ending after December 31, 1983,
821 shall estimate an amount not less than eighty percent (80%) of the
822 tax actually due in the case of an individual or, except as
823 otherwise provided in Section 27-7-329(f), an amount not less than
824 ninety percent (90%) of the tax actually due in the case of a
825 corporation. Any corporate taxpayer which either fails to file
826 the required estimated tax returns and pay the tax within the time
827 prescribed, or, except as otherwise provided in Section
828 27-7-329(f), which underestimates the required amount of the
829 estimated tax shall be liable for a penalty in the amount of ten
830 percent (10%) of the amount unpaid plus interest at the rate
831 of * * * one-half of one percent (1/2 of 1%) per month on such
832 amount. Any individual taxpayer who either fails to file the
833 required estimated tax returns and pay the tax within the time
834 prescribed, or who underestimates the required amount of the
835 estimated tax shall be liable for interest at the rate of * * *
836 one-half of one percent (1/2 of 1%) per month on such amount.



837 **SECTION 8.** Section 27-7-345, Mississippi Code of 1972, is
838 amended as follows:

839 27-7-345. Any taxpayer who either fails to file a required
840 return within the time prescribed, or who fails to remit the tax
841 or remits less than the amount due under the return, shall be
842 liable for the following penalties:

843 (a) If the failure to file a return within the time
844 prescribed, or the failure to pay the tax or any part thereof, was
845 not the result of any fraudulent intent, the taxpayer shall be
846 liable for a penalty in the amount of ten percent (10%) of the
847 total amount of deficiency or delinquency in the tax, plus
848 interest on the amount of tax due at the rate of * * * one-half of
849 one percent (1/2 of 1%) per month on the amount not paid, from the
850 date such tax was due until paid, and such amount shall be added
851 to the liability of the taxpayer unless such failure was due to
852 reasonable cause.

853 (b) If the failure to file the return or to remit the
854 tax or any part thereof was the result of a fraudulent intent to
855 evade the payment to the commissioner, the taxpayer, in addition
856 to the criminal penalty provided in Section 27-7-347, shall be
857 liable for a penalty of fifty percent (50%) of the tax due, plus
858 interest on the amount of tax due at the rate of one percent (1%)
859 per month on the amount not paid.

860 (c) If the failure to file an information return or to
861 furnish a required statement within the time prescribed was not



862 the result of any fraudulent intent, the taxpayer shall be liable
863 for a penalty of Five Dollars (\$5.00) per statement, with a
864 minimum of Two Hundred Fifty Dollars (\$250.00) up to a maximum of
865 Ten Thousand Dollars (\$10,000.00) per reporting account.

866 (d) If the failure to file an information return or to
867 furnish a required statement was the result of intentional
868 disregard of filing requirements, the taxpayer shall be liable for
869 a penalty of Twenty-five Dollars (\$25.00) per statement, with a
870 minimum of Two Hundred Fifty Dollars (\$250.00) up to a maximum of
871 Fifty Thousand Dollars (\$50,000.00) per reporting account.

872 **SECTION 9.** Section 27-13-23, Mississippi Code of 1972, is
873 amended as follows:

874 27-13-23. (1) If a return is timely filed by the taxpayer
875 but the tax is not paid, the commissioner shall make his
876 assessment of tax due by certified mail, return receipt requested,
877 or by personal delivery of the assessment to the taxpayer, which
878 assessment shall constitute notice and demand for payment. The
879 taxpayer shall be given a period of sixty (60) days from the
880 date * * * the commissioner mailed or hand delivered the notice in
881 which to pay the tax due, including penalty and interest as
882 provided in this section, and if the sum is not paid within the
883 sixty-day period, the commissioner shall proceed to collect it
884 under the provisions of Sections 27-13-29 through 27-13-41 of this
885 chapter; provided that within the sixty-day period the taxpayer
886 may appeal to the board of review as provided by law.



887 (2) If no return is made by a taxpayer required by this
888 chapter to make a return, the commissioner shall determine the
889 taxpayer's liability from the best information available, which
890 determination shall be prima facie correct for the purpose of this
891 chapter, and the commissioner shall forthwith make an assessment
892 of the tax so determined to be due by certified mail, return
893 receipt requested, or by personal delivery of the assessment to
894 the taxpayer, which assessment shall constitute notice and demand
895 for payment. The taxpayer shall be given a period of sixty (60)
896 days from the date * * * the commissioner mailed or hand delivered
897 the notice in which to pay the tax due, including penalty and
898 interest as provided in this section, and if the sum is not paid
899 within the sixty-day period, the commissioner shall proceed to
900 collect it under the provisions of Sections 27-13-29 through
901 27-13-41 of this chapter; provided that within the sixty-day
902 period the taxpayer may appeal to the board of review as provided
903 by law.

904 (3) Interest at the rate of * * * one-half of one percent
905 (1/2 of 1%) per month on the total amount of the deficiency or
906 delinquency of the tax from the due date of the return * * * may
907 be added or assessed in addition to the tax due as provided in
908 subsections (1) and (2) of this section.

909 (4) In case of failure to file a return as required by this
910 chapter, unless it can be shown that the failure is due to
911 reasonable cause and not due to willful neglect, there * * * may



912 be added to the amount required to be shown as tax on the return a
913 penalty of five percent (5%) of the total amount of the deficiency
914 or delinquency of the tax if the failure is for not more than one
915 (1) month, with an additional five percent (5%) for each
916 additional month or fraction thereof during which the failure
917 continues, not to exceed twenty-five percent (25%) in the
918 aggregate.

919 (5) In case of failure to pay the amount shown as tax on any
920 return specified in subsections (1) and (2) of this section on or
921 before the date prescribed for payment of the tax, determined with
922 regard to any extension of time for payment, unless it is shown
923 that the failure is due to reasonable cause and not due to willful
924 neglect, there * * * may be added to the amount shown as tax on
925 the return one-half of one percent (1/2 of 1%) of the total amount
926 of the deficiency or delinquency of the tax if the failure is for
927 not more than one (1) month, with an additional one-half of one
928 percent (1/2 of 1%) for each additional month or fraction thereof
929 during which the failure continues, not to exceed twenty-five
930 percent (25%) in the aggregate.

931 **SECTION 10.** Section 27-13-25, Mississippi Code of 1972, is
932 amended as follows:

933 27-13-25. (1) If, upon examination of a return made under
934 the provisions of this chapter, it appears that the correct amount
935 of tax is greater or less than that shown in the return, the tax
936 shall be recomputed. Any overpayment of tax so determined shall



937 be credited or refunded to the taxpayer. If the correct amount of
938 tax is greater than that shown in the return of the taxpayer, the
939 commissioner shall make his assessment of additional tax due by
940 certified mail, return receipt requested or by personal delivery
941 of the assessment to the taxpayer, which assessment shall
942 constitute notice and demand for payment. The taxpayer shall be
943 given a period of sixty (60) days from the date * * * the
944 commissioner mailed or hand delivered the notice in which to pay
945 the additional tax due, including penalty and interest as provided
946 in this section, and if the sum is not paid within the sixty-day
947 period, the commissioner shall proceed to collect it under the
948 provisions of Sections 27-13-29 through 27-13-41, provided that
949 within the sixty-day period the taxpayer may appeal to the board
950 of review as provided by law.

951 (2) In the case of an overpayment of tax, interest shall be
952 computed under the provisions of Section 27-7-315. In the case of
953 an underpayment of tax, unless it is shown that the failure is due
954 to reasonable cause and not willful neglect, interest at the rate
955 of * * * one-half of one percent (1/2 of 1%) per month from the
956 due date of the return * * * may be added or assessed in addition
957 to the additional tax due as provided in subsection (1) of this
958 section.

959 (3) In case of failure to pay any additional taxes as
960 assessed under this section, unless it is shown that the failure
961 is due to reasonable cause and not due to willful neglect,



962 there * * * may be added to the additional amount assessed a
963 penalty of one-half of one percent (1/2 of 1%) of the amount of
964 the additional tax if the failure is for not more than one (1)
965 month, with an additional one-half of one percent (1/2 of 1%) for
966 each additional month or fraction thereof during which the failure
967 continues, not to exceed twenty-five percent (25%) in the
968 aggregate.

969 **SECTION 11.** Section 27-65-3, Mississippi Code of 1972, is
970 amended as follows:

971 27-65-3. The words, terms and phrases, when used in this
972 chapter, shall have the meanings ascribed to them herein.

973 (a) "Tax Commission" or "department" means the
974 Department of Revenue of the State of Mississippi.

975 (b) "Commissioner" means the Commissioner of Revenue of
976 the Department of Revenue.

977 (c) "Person" means and includes any individual, firm,
978 copartnership, joint venture, association, corporation, promoter
979 of a temporary event, estate, trust or other group or combination
980 acting as a unit, and includes the plural as well as the singular
981 in number. "Person" shall include husband or wife or both where
982 joint benefits are derived from the operation of a business taxed
983 hereunder. "Person" shall also include any state, county,
984 municipal or other agency or association engaging in a business
985 taxable under this chapter.



986 (d) "Tax year" or "taxable year" means either the
987 calendar year or the taxpayer's fiscal year.

988 (e) "Taxpayer" means any person liable for or having
989 paid any tax to the State of Mississippi under the provisions of
990 this chapter or, in the case of a claim for a refund of overpaid
991 taxes, any person who paid a tax to a seller or other party and
992 bore the economic burden of the tax. A taxpayer is required to
993 obtain a sales tax permit under Section 27-65-27 before engaging
994 in business in this state. If a taxpayer fails to obtain a sales
995 tax permit before engaging in business in this state, the taxpayer
996 shall pay the retail rate on all purchases of tangible personal
997 property and/or services in this state, even if purchased for
998 resale. Upon obtaining a sales tax permit, a previously
999 unregistered taxpayer shall file sales tax returns for all tax
1000 periods during which he engaged in business in this state without
1001 a sales tax permit, and report and pay the sales tax accruing from
1002 his operation during this period and any applicable penalties and
1003 interest. On such return, the taxpayer may take a credit for any
1004 sales taxes paid during the period he operated without a sales tax
1005 permit on a purchase that would have constituted a wholesale sale
1006 if the taxpayer had a sales tax permit at the time of the purchase
1007 and if proper documentation exists to substantiate a wholesale
1008 sale. This credit may also be allowed in any audit of the
1009 taxpayer. Any penalties and interest owed by the taxpayer on the
1010 return or in an audit for a period during which he operated



1011 without a sales tax permit may be determined based on the sales
1012 tax accruing from the taxpayer's operation for that period after
1013 the taking of this credit.

1014 (f) "Sale" or "sales" includes the barter or exchange
1015 of property as well as the sale thereof for money or other
1016 consideration, and every closed transaction by which the title to
1017 taxable property passes shall constitute a taxable event.

1018 "Sale" shall also include the passing of title to property
1019 for a consideration of coupons, trading stamps or by any other
1020 means when redemption is subsequent to the original sale by which
1021 the coupon, stamp or other obligation was created.

1022 The situs of a sale for the purpose of distributing taxes to
1023 municipalities shall be the same as the location of the business
1024 from which the sale is made except that:

1025 (i) Retail sales along a route from a vehicle or
1026 otherwise by a transient vendor shall take the situs of delivery
1027 to the customer.

1028 (ii) The situs of wholesale sales of tangible
1029 personal property taxed at wholesale rates, the amount of which is
1030 allowed as a credit against the sales tax liability of the
1031 retailer, shall be the same as the location of the business of the
1032 retailer receiving the credit.

1033 (iii) The situs of wholesale sales of tangible
1034 personal property taxed at wholesale rates, the amount of which is



1035 not allowed as a credit against the sales tax liability of the
1036 retailer, shall have a rural situs.

1037 (iv) Income received from the renting or leasing
1038 of property used for transportation purposes between cities or
1039 counties shall have a rural situs.

1040 (g) "Delivery charges" shall mean and include any
1041 expenses incurred by a seller in acquiring merchandise for sale in
1042 the regular course of business commonly known as "freight-in" or
1043 "transportation costs-in." "Delivery charges" also include any
1044 charges made by the seller for delivery of property sold to the
1045 purchaser.

1046 (h) "Gross proceeds of sales" means the value
1047 proceeding or accruing from the full sale price of tangible
1048 personal property, including installation charges, carrying
1049 charges, or any other addition to the selling price on account of
1050 deferred payments by the purchaser, without any deduction for
1051 delivery charges, cost of property sold, other expenses or losses,
1052 or taxes of any kind except those expressly exempt by this
1053 chapter.

1054 "Gross proceeds of sales" includes consideration received by
1055 the seller from third parties if:

1056 (i) The seller actually received consideration
1057 from a party other than the purchaser and the consideration is
1058 directly related to a price reduction or discount on the sale;



1059 (ii) The seller has an obligation to pass the
1060 price reduction or discount through to the purchaser;

1061 (iii) The amount of the consideration attributable
1062 to the sale is fixed and determinable by the seller at the time of
1063 the sale of the item to the purchaser; and

1064 (iv) One (1) of the following criteria is met:

1065 1. The purchaser presents a coupon,
1066 certificate or other documentation to the seller to claim a price
1067 reduction or discount where the coupon, certificate or
1068 documentation is authorized, distributed or granted by a third
1069 party with the understanding that the third party will reimburse
1070 any seller to whom the coupon, certificate or documentation is
1071 presented;

1072 2. The purchaser identified himself or
1073 herself to the seller as a member of a group or organization
1074 entitled to a price reduction or discount (a "preferred customer"
1075 card that is available to any patron does not constitute
1076 membership in such a group); or

1077 3. The price reduction or discount is
1078 identified as a third-party price reduction or discount on the
1079 invoice received by the purchaser or on a coupon, certificate or
1080 other documentation presented by the purchaser.

1081 Where a trade-in is taken as part payment on tangible
1082 personal property sold, "gross proceeds of sales" shall include
1083 only the difference received between the selling price of the



1084 tangible personal property and the amount allowed for a trade-in
1085 of property of the same kind. When the trade-in is subsequently
1086 sold, the selling price thereof shall be included in "gross
1087 proceeds of sales."

1088 "Gross proceeds of sales" shall include the value of any
1089 goods, wares, merchandise or property purchased at wholesale or
1090 manufactured, and any mineral or natural resources produced, which
1091 are withdrawn or used from an established business or from the
1092 stock in trade for consumption or any other use in the business or
1093 by the owner. However, "gross proceeds of sales" does not include
1094 meals prepared by a restaurant and provided at no charge to
1095 employees of the restaurant or donated to a charitable
1096 organization that regularly provides food to the needy and the
1097 indigent and which has been granted exemption from the federal
1098 income tax as an organization described in Section 501(c)(3) of
1099 the Internal Revenue Code of 1986.

1100 "Gross proceeds of sales" shall not include bad check or
1101 draft service charges as provided for in Section 97-19-57.

1102 (i) "Gross income" means the total charges for service
1103 or the total receipts (actual or accrued) derived from trades,
1104 business or commerce by reason of the investment of capital in the
1105 business engaged in, including the sale or rental of tangible
1106 personal property, compensation for labor and services performed,
1107 and including the receipts from the sales of property retained as
1108 toll, without any deduction for rebates, cost of property sold,



1109 cost of materials used, labor costs, interest paid, losses or any
1110 expense whatever.

1111 "Gross income" shall also include the cost of property given
1112 as compensation when the property is consumed by a person
1113 performing a taxable service for the donor.

1114 However, "gross income" or "gross proceeds of sales" shall
1115 not be construed to include the value of goods returned by
1116 customers when the total sale price is refunded either in cash or
1117 by credit, or cash discounts allowed and taken on sales. Cash
1118 discounts shall not include the value of trading stamps given with
1119 a sale of property.

1120 (j) "Tangible personal property" means personal
1121 property perceptible to the human senses or by chemical analysis
1122 as opposed to real property or intangibles and shall include
1123 property sold on an installed basis which may become a part of
1124 real or personal property.

1125 (k) "Installation charges" shall mean and include the
1126 charge for the application of tangible personal property to real
1127 or personal property without regard to whether or not it becomes a
1128 part of the real property or retains its personal property
1129 classification. It shall include, but not be limited to, sales in
1130 place of roofing, tile, glass, carpets, drapes, fences, awnings,
1131 window air-conditioning units, gasoline pumps, window guards,
1132 floor coverings, carports, store fixtures, aluminum and plastic
1133 siding, tombstones and similar personal property.



1134 (1) "Newspaper" means a periodical which:
1135 (i) Is not published primarily for advertising
1136 purposes and has not contained more than seventy-five percent
1137 (75%) advertising in more than one-half (1/2) of its issues during
1138 any consecutive twelve-month period excluding separate advertising
1139 supplements inserted into but separately identifiable from any
1140 regular issue or issues;
1141 (ii) Has been established and published
1142 continuously for at least twelve (12) months;
1143 (iii) Is regularly issued at stated intervals no
1144 less frequently than once a week, bears a date of issue, and is
1145 numbered consecutively; provided, however, that publication on
1146 legal holidays of this state or of the United States and on
1147 Saturdays and Sundays shall not be required, and failure to
1148 publish not more than two (2) regular issues in any calendar year
1149 shall not exclude a periodical from this definition;
1150 (iv) Is issued from a known office of publication,
1151 which shall be the principal public business office of the
1152 newspaper and need not be the place at which the periodical is
1153 printed and a newspaper shall be deemed to be "published" at the
1154 place where its known office of publication is located;
1155 (v) Is formed of printed sheets; provided,
1156 however, that a periodical that is reproduced by the stencil,
1157 mimeograph or hectograph process shall not be considered to be a
1158 "newspaper"; and



1159 (vi) Is originated and published for the
1160 dissemination of current news and intelligence of varied, broad
1161 and general public interest, announcements and notices, opinions
1162 as editorials on a regular or irregular basis, and advertising and
1163 miscellaneous reading matter.

1164 The term "newspaper" shall include periodicals which are
1165 designed primarily for free circulation or for circulation at
1166 nominal rates as well as those which are designed for circulation
1167 at more than a nominal rate.

1168 The term "newspaper" shall not include a publication or
1169 periodical which is published, sponsored by, is directly supported
1170 financially by, or is published to further the interests of, or is
1171 directed to, or has a circulation restricted in whole or in part
1172 to any particular sect, denomination, labor or fraternal
1173 organization or other special group or class or citizens.

1174 For purposes of this paragraph, a periodical designed
1175 primarily for free circulation or circulation at nominal rates
1176 shall not be considered to be a newspaper unless such periodical
1177 has made an application for such status to the department in the
1178 manner prescribed by the department and has provided to the
1179 department documentation satisfactory to the department showing
1180 that such periodical meets the requirements of the definition of
1181 the term "newspaper." However, if such periodical has been
1182 determined to be a newspaper under action taken by the department
1183 on or before April 11, 1996, such periodical shall be considered



1184 to be a newspaper without the necessity of applying for such
1185 status. A determination by the Department of Revenue that a
1186 publication is a newspaper shall be limited to the application of
1187 this chapter and shall not establish that the publication is a
1188 newspaper for any other purpose.

1189 (m) "MPC" or "Material Purchase Certificate" means a
1190 certificate for which a person that is liable for the tax levy
1191 under Section 27-65-21 can apply and obtain from the commissioner,
1192 and when issued, entitles the holder to purchase materials and
1193 services that are to become a component part of a structure to be
1194 erected or repaired with no tax due. Any person taxable under
1195 Section 27-65-21 who obtains an MPC for a project and purchases
1196 materials and services in this state that are to become a
1197 component part of a structure being erected or repaired in the
1198 project and at any time pays sales tax on these purchases may,
1199 after obtaining the MPC for the project, take a credit against his
1200 sales taxes for the sales tax paid on these purchases if proper
1201 documentation exists to substantiate the payment of the sales tax
1202 on the purchase of component materials and services. This credit
1203 may also be allowed in any audit of the taxpayer. Any penalties
1204 and interest owed by the taxpayer on the return or in the audit
1205 where this credit is taken may be determined based on the sales
1206 tax due after the taking of this credit.

1207 **SECTION 12.** Section 27-65-31, Mississippi Code of 1972, is
1208 amended as follows:



1209 27-65-31. Any person liable for a privilege tax levied and
1210 assessed by this chapter except the taxes levied by Sections
1211 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of 1972,
1212 shall add the amount of such tax due by him to the sales price or
1213 gross income and, in addition thereto, shall collect, insofar as
1214 practicable, the amount of the tax due by him from the purchaser
1215 at the time the sales price or gross income is collected.

1216 The commissioner is authorized, in his discretion, to
1217 prescribe by rule or regulation, brackets or schedules by which
1218 the applicable tax shall be collected from the purchaser.

1219 The commissioner shall have the authority to make changes as
1220 necessary by rule or regulation to implement an agreement for the
1221 collection of sales tax by direct marketers with limited contact
1222 in Mississippi if, in his discretion, it is beneficial to the
1223 state for him to do so.

1224 It shall be unlawful for any person, who is liable for a
1225 privilege tax levied by this chapter except the taxes levied by
1226 Sections 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of
1227 1972, to fail or refuse to add to the sales price and collect,
1228 insofar as practicable, the amount of tax due by him on each sale,
1229 except where the tax was included in the cost of furnishing
1230 service when said cost was a factor in the fixing of rates and
1231 charges.

1232 The tax due under the provisions of this chapter shall be
1233 computed and paid on gross income or gross proceeds of sales of



1234 the business, regardless of the fact that small unit sales may be
1235 within the bracket of one (1) of the schedules which does not
1236 provide for the collection of the tax from the customer.

1237 Nothing in this section with reference to the collection of
1238 the tax from the customer shall be construed to impair, abridge,
1239 alter or affect the obligation of any contract in existence at the
1240 time it becomes effective.

1241 When the tax collected for any filing period is in excess of
1242 the amount due, the total tax collected, including that in excess
1243 of the computed liability, shall be paid to the commissioner.
1244 This provision shall be construed with other provisions of the law
1245 and given effect so as to result in the payment to the
1246 commissioner of the total tax collected if in excess of the amount
1247 due when computed at the applicable rates.

1248 The funds collected by the taxpayer (seller) from the
1249 purchaser pursuant to the provisions of this chapter shall be
1250 considered "trust fund monies" and the taxpayer shall hold these
1251 funds in trust for the State of Mississippi * * *. * * * The
1252 funds * * * shall be separately accounted for as provided by
1253 regulation of the commissioner. If the taxpayer fails to remit
1254 these trust fund monies as required by law, then the taxpayer may
1255 be assessed with a penalty in three (3) times the amount of taxes
1256 due. This penalty is to be assessed and collected in the same
1257 manner as taxes imposed by this chapter and shall be in addition
1258 to all other penalties and/or interest otherwise imposed. * * *



1259 The penalty provided in this paragraph shall not be levied unless
1260 the commissioner shall prove by clear and convincing evidence that
1261 the taxpayer actually collected these trust fund monies from the
1262 purchaser and knowingly and intentionally failed to remit them.

1263 Any person violating the provisions of this section shall be
1264 guilty of a misdemeanor and, upon conviction, shall be fined in a
1265 sum not less than Fifty Dollars (\$50.00) nor more than One Hundred
1266 Dollars (\$100.00).

1267 **SECTION 13.** Section 27-65-35, Mississippi Code of 1972, is
1268 amended as follows:

1269 27-65-35. If no return is made on or before the due date by
1270 any taxpayer required to make a return, the commissioner, as soon
1271 as practicable after the due date, shall make an assessment of
1272 taxes and damages from any information available, which shall be
1273 prima facie correct. The commissioner shall give written notice
1274 by certified mail, return receipt requested, or by personal
1275 delivery to the taxpayer of the tax and damages thus assessed and
1276 demand payment within sixty (60) days from the date * * * the
1277 commissioner mailed or hand delivered the notice. * * * However,
1278 if the taxpayer shall file a return and pay the tax shown to be
1279 due within sixty (60) days from the date * * * the commissioner
1280 mailed or hand delivered the assessment, the return and payment
1281 shall be accepted in lieu of the assessment.

1282 **SECTION 14.** Section 27-65-37, Mississippi Code of 1972, is
1283 amended as follows:



1284 27-65-37. (1) If adequate records of the gross income or
1285 gross proceeds of sales are not maintained or invoices preserved
1286 as provided herein, or if an audit of the records of a taxpayer,
1287 or any return filed by him, or any other information discloses
1288 that taxes are due and unpaid, the commissioner shall make
1289 assessments of taxes, damages, and interest from any information
1290 available, which shall be prima facie correct. However, if in an
1291 audit of the records of a taxpayer it is determined that during
1292 the period being audited the taxpayer reported and paid tax in
1293 accordance with a method used during a prior period which had been
1294 audited by the commissioner and not found to result in any
1295 additional tax due, the commissioner shall be estopped from
1296 collecting any additional tax as a result of the use of this
1297 previously audited method for any period prior to notification by
1298 the commissioner or his agent during the current audit that use of
1299 the previously audited method would result in additional tax being
1300 due if it is determined, through all information available
1301 regarding this taxpayer, that:

1302 (a) The method in issue was previously audited by the
1303 commissioner with no additional tax determined to be due under
1304 such method;

1305 (b) The method under consideration in the current audit
1306 is the same method that was used in the prior audit;



1307 (c) There has not been a statutory or regulatory change
1308 that would have resulted in additional tax being due under this
1309 method after the statutory or regulatory change; and

1310 (d) The taxpayer detrimentally relied on the fact that
1311 this method had been previously audited and not found to result in
1312 additional tax.

1313 (2) The commissioner shall give notice by certified mail,
1314 return receipt requested, or by personal delivery to the taxpayer
1315 of the assessments and demand payment of the tax, damages and
1316 interest within sixty (60) days from the date * * * the
1317 commissioner mailed or hand delivered the notice. * * *

1318 (3) If the taxpayer shall fail or refuse to comply with the
1319 notice of assessment or shall fail to petition for a hearing, the
1320 commissioner shall proceed as provided in Section 27-65-39.

1321 **SECTION 15.** Section 27-65-39, Mississippi Code of 1972, is
1322 amended as follows:

1323 27-65-39. If any part of the deficient or delinquent tax is
1324 due to negligence or failure to comply with the provisions of this
1325 chapter or authorized rules and regulations promulgated under the
1326 provisions of this chapter, or is due to reasonable cause, not due
1327 to willful neglect, or is done without intent to defraud, there
1328 may be added as damages ten percent (10%) of the total amount of
1329 deficiency or delinquency in the tax, or interest at the rate
1330 of * * * one-half of one percent (1/2 of 1%) per month, or both,
1331 from the date such tax was due until paid, and the tax, damages



1332 and interest shall become payable upon notice and demand by the
1333 commissioner.

1334 If any part of the deficient or delinquent tax is due to
1335 intentional disregard of the provisions of this chapter or
1336 authorized rules and regulations promulgated under the provisions
1337 of this chapter, without reasonable cause, or is due to fraud with
1338 intent to evade the law, then there * * * may be added as damages
1339 fifty percent (50%) of the total amount of the deficiency or
1340 delinquency of the tax, and in such case the whole amount of tax
1341 unpaid, including the charges so added, shall become due and
1342 payable upon notice and demand by the commissioner, and interest
1343 of * * * one-half of one percent (1/2 of 1%) per month of the
1344 total amount of the deficiency or delinquency of the tax * * * may
1345 be added from the date such tax was due until paid. A taxpayer's
1346 purported disregard of instructions given through an audit shall
1347 not be a basis for the imposition of the penalty provided in this
1348 paragraph. A taxpayer's good-faith challenge to the
1349 constitutionality or legality of a law or regulation shall
1350 constitute reasonable cause and shall preclude the imposition of
1351 the penalties provided under this paragraph.

1352 **SECTION 16.** Section 27-77-1, Mississippi Code of 1972, is
1353 amended as follows:

1354 27-77-1. As used in this chapter:

1355 (a) "Agency" means the commissioner acting directly or
1356 through his duly authorized officers, agents, representatives and



1357 employees, to perform duties and powers prescribed by the laws of
1358 this state to be performed by the Commissioner of Revenue or the
1359 Department of Revenue.

1360 (b) "Board of review" means the board of review of the
1361 Department of Revenue as appointed by the commissioner under
1362 Section 27-77-3, and also means a panel of the board of review
1363 when an appeal is considered by a panel of the board of review
1364 instead of the board of review en banc.

1365 (c) "Board of Tax Appeals" means the Board of Tax
1366 Appeals as created under Section 27-4-1.

1367 (d) "Chairman" means the Chairman of the Board of Tax
1368 Appeals.

1369 (e) "Commissioner" means the Commissioner of the
1370 Department of Revenue.

1371 (f) "Denial" means the final decision of the staff of
1372 the agency to deny the claim, request for waiver or application
1373 being considered. In this context, staff of the agency does not
1374 include the board of review or the Board of Tax Appeals. "Denial"
1375 does not mean the act of returning or refusing to consider a
1376 claim, request for waiver or application for permit, IFTA license,
1377 IRP registration, title or tag by the staff of the agency due to a
1378 lack of information and/or documentation unless the return or
1379 refusal is in response to a representation by the person who filed
1380 the claim, request for waiver or application in issue that



1381 information and/or documentation indicated by the staff of the
1382 agency to be lacking cannot or will not be provided.

1383 (g) "Designated representative" means an individual who
1384 represents a person in an administrative appeal before a hearing
1385 officer of the agency, before the board of review or before the
1386 Board of Tax Appeals.

1387 (h) "Executive director" means the Executive Director
1388 of the Board of Tax Appeals.

1389 (i) "IFTA license" means a permit, license or decal
1390 which the agency is authorized to issue or revoke under the
1391 Interstate Commercial Carriers Motor Fuel Tax Law (Section 27-61-1
1392 et seq.) or the International Fuel Tax Agreement.

1393 (j) "IFTA licensee" means a person holding the IFTA
1394 license, applying for an IFTA license or renewing an IFTA license.

1395 (k) "IRP registration" means the registration of a
1396 vehicle under the provisions of the International Registration
1397 Plan.

1398 (l) "IRP registrant" means a person in whose name a
1399 vehicle or vehicles are registered under the provisions of the
1400 International Registration Plan.

1401 (m) "IRP credentials" means the cab card and license
1402 plate issued by the commissioner or agency in accordance with the
1403 International Registration Plan.

1404 (n) "Last-known address" when referring to the mailing
1405 of a notice of intent to suspend, revoke or to order the surrender



1406 and/or seizure of the permit, IFTA license, IRP registration, IRP
1407 credentials, tag or title or to the mailing of a denial of the
1408 permit, IFTA license, IRP registration, tag or title, means the
1409 last mailing address of the person being sent the notice as it
1410 appears on the record of the agency in regard to the permit, IFTA
1411 license, IRP registration, tag or title in issue. All other
1412 references to "last-known address" in this chapter mean the
1413 official mailing address that the hearing officer, the board of
1414 review or the executive director has for the addressee in their
1415 file on the administrative appeal in which the document or item is
1416 being mailed to the addressee. The addressee is presumed to have
1417 received any document or item mailed to his official mailing
1418 address. The commissioner, by regulation, shall prescribe the
1419 procedure for establishing an official mailing address in the
1420 administrative appeal process for appeals before an administrative
1421 hearing officer or the Board of Review of the Department of
1422 Revenue and the procedure for changing that official mailing
1423 address. The Board of Tax Appeals, by regulation, shall prescribe
1424 the procedure for establishing an official mailing address in the
1425 administrative appeal process before that board and the procedure
1426 for changing that official mailing address. It is the
1427 responsibility of the addressee to make sure that his official
1428 mailing address is correct.

1429 (o) "Mail," "mailed" or "mailing" means placing the
1430 document or item referred to in * * * United States mail, postage



1431 prepaid, via certified mail, return receipt requested, addressed
1432 to the person to whom the document or item is to be sent at the
1433 last-known address of that person. Where a person is represented
1434 in an administrative appeal before a hearing officer, the board of
1435 review or the Board of Tax Appeals by a designated representative,
1436 the terms "mail," "mailed" or "mailing" when referring to sending
1437 a document or item to that person shall also mean placing the
1438 document or item referred to in * * * United States mail, via
1439 certified mail, return receipt requested, postage prepaid, to the
1440 last-known address of that person's designated representative.
1441 Mailing to the designated representative of a taxpayer, permittee,
1442 IFTA licensee, IRP registrant, tag holder or title interest holder
1443 shall constitute mailing and notice to the taxpayer, permittee,
1444 IFTA licensee, IRP registrant, tag holder or title interest
1445 holder, unless it is established by sworn affidavit that the
1446 notice was not received from the designated representative.

1447 (p) "Permit" means a type of license or permit that the
1448 agency is authorized to issue, suspend or revoke, such as a sales
1449 tax permit, a beer permit, a tobacco permit, a dealer license, or
1450 designated agent status, but does not include:

1451 (i) Any type of permit issued under the Local
1452 Option Alcoholic Beverage Control Law, Section 67-1-1 et seq. or
1453 under the Mississippi Native Wine Law of 1976, Section 67-5-1 et
1454 seq.;

1455 (ii) An IFTA license; or



1456 (iii) An IRP registration, including the IRP
1457 credential issued as a result of IRP registration.

1458 (q) "Permittee" means a person holding a permit,
1459 applying for a permit or renewing a permit.

1460 (r) "Person" means a natural person, partnership,
1461 limited partnership, corporation, limited liability company,
1462 estate, trust, association, joint venture, other legal entity or
1463 other group or combination acting as a unit, and includes the
1464 plural as well as the singular in number. "Person" includes the
1465 state, county, municipal, other political subdivision and any
1466 agency, institution or instrumentality thereof, but only when used
1467 in the context of a taxpayer, permittee, IFTA licensee, IRP
1468 registrant, tag holder or title interest holder.

1469 (s) "Refund claim" means a claim made in writing by a
1470 taxpayer and received by the agency wherein the taxpayer indicates
1471 that he overpaid taxes to the agency and requests a refund of the
1472 overpayment and/or a credit against current or future taxes for
1473 the overpayment.

1474 (t) "Resident," when used to describe a taxpayer or
1475 petitioner, means a natural person whose residence and place of
1476 abode is within the State of Mississippi.

1477 (u) "Tag" means a type of license tag, plate or
1478 registration card for a motor vehicle or trailer that the agency
1479 is authorized under the Mississippi Motor Vehicle Privilege Tax
1480 Law, Section 27-19-1 et seq., or under the Motor Vehicle Dealer



1481 Tag Permit Law, Section 27-19-301 et seq., to issue or approve
1482 before issuance, but does not include other types of license tags
1483 or plates issued by the county tax collectors except for
1484 personalized license tags and only to the extent that the agency
1485 determines under Section 27-19-48 that a personalized license tag
1486 applied for is considered obscene, slandering, insulting or vulgar
1487 in ordinary usage or demands the surrender or orders the seizure
1488 of the tag where issued in error.

1489 (v) "Tag holder" means the person in whose name a tag
1490 is registered or the person applying for a tag.

1491 (w) "Tag penalty" means the penalties imposed under
1492 Sections 27-19-63 and 27-51-43 for any delinquency in the payment
1493 of motor vehicle privilege tax and ad valorem tax on a motor
1494 vehicle which can be waived by the agency for good reason shown.
1495 Pursuant to Section 27-51-103, imposition of this ad valorem tag
1496 penalty at the maximum rate of twenty-five percent (25%) also
1497 results in ineligibility for the credit against motor vehicle ad
1498 valorem taxes provided by that statute. Waiver of the twenty-five
1499 percent (25%) delinquency penalty by the agency under Section
1500 27-51-43 shall reinstate credit eligibility.

1501 (x) "Tax" means a tax, fee, penalty and/or interest
1502 which the agency is required by either general law or by local and
1503 private law to administer, assess and collect.

1504 (y) "Taxpayer" means a person who is liable for or paid
1505 any tax to the agency.



1506 (z) "Title" means a title to a motor vehicle or
1507 manufactured housing issued by the agency under the Mississippi
1508 Motor Vehicle Title Law, Section 63-21-1 et seq.

1509 (aa) "Title interest holder" shall mean the owner or
1510 lienholder in a motor vehicle or manufactured housing as indicated
1511 on a title issued by the agency or as indicated on an application
1512 to the agency for the issuance of a title.

1513 **SECTION 17.** Section 27-77-5, Mississippi Code of 1972, is
1514 amended as follows:

1515 27-77-5. (1) Any taxpayer aggrieved by an assessment of tax
1516 by the agency, by the agency's denial of a refund claim, * * * by
1517 the denial of a waiver of tag penalty, or by any other action of
1518 the agency affecting a taxpayer's liability or claim to tax
1519 credits or incentives which is not otherwise covered in this
1520 subsection or Section 27-77-13, and who wishes to contest the
1521 action of the agency shall, within sixty (60) days from the date
1522 the agency mailed written notice of the action, file an appeal in
1523 writing with the board of review requesting a hearing and
1524 correction of the contested action specifying in detail the relief
1525 requested and any other information that might be required by
1526 regulation. Even after an appeal is filed with the board of
1527 review, the agency retains the authority to change the assessment,
1528 the denial of refund claim or the denial of tag penalty being
1529 appealed.



1530 (2) Upon receipt of a timely written appeal from a tax
1531 assessment, refund claim denial * * *, denial of waiver of a tag
1532 penalty, or any other action of the agency affecting a taxpayer's
1533 liability or claim to tax credits or incentives which is not
1534 otherwise covered in this subsection or Section 27-77-13, a
1535 hearing shall be scheduled before the board of review unless it is
1536 determined that the relief requested in the written appeal should
1537 be granted without a hearing. A notice of the hearing shall be
1538 mailed to the taxpayer advising the taxpayer of the date, time and
1539 location of the hearing. The taxpayer or his designated
1540 representative shall attend the hearing unless a request is made
1541 to, and granted by, the board of review to allow the taxpayer to
1542 submit his position in writing or by electronic transmission in
1543 lieu of attendance. Failure of the taxpayer or his designated
1544 representative to attend a hearing or to submit his position in
1545 writing or by electronic transmission by the date specified by the
1546 board of review or by the hearing date, if no date was specified,
1547 shall constitute a withdrawal of the appeal.

1548 (3) At a hearing before the board of review on a tax
1549 assessment, denial of refund claim * * *, denial of waiver of a
1550 tag penalty, or any other action of the agency affecting a
1551 taxpayer's liability or claim to tax credits or incentives which
1552 is not otherwise covered in this subsection or Section 27-77-13,
1553 the board of review shall try the issues presented, according to
1554 law and the facts and within the guidelines established by



1555 regulation. The hearing before the board of review shall be
1556 informal and no official transcript will be made of the hearing.
1557 At the earliest practical date after the hearing, the members of
1558 the board of review that heard the appeal shall make a
1559 determination on the matter presented and notify the taxpayer of
1560 its findings by mailing a copy of its order to the taxpayer. If
1561 the order involves the appeal of a denial of a waiver of tag
1562 penalty, a copy of the order shall also be mailed to the tax
1563 collector that imposed the penalty. If in the order the board of
1564 review orders the taxpayer to pay a tax assessment, the taxpayer
1565 shall, within sixty (60) days from the date the board of review
1566 mailed written notice of the order, pay the amount ordered to be
1567 paid or appeal the order of the board of review to the Board of
1568 Tax Appeals. After the sixty-day period, if an appeal is not
1569 filed by the taxpayer with the Executive Director of the Board of
1570 Tax Appeals and the tax determined by the board of review is not
1571 paid, the agency shall proceed to collect the tax assessment as
1572 determined by the board of review.

1573 (4) Any taxpayer aggrieved by an order of the board of
1574 review affirming a tax assessment, the denial of a refund
1575 claim * * *, the denial of a waiver of tag penalty, or any other
1576 action of the agency affecting a taxpayer's liability or claim to
1577 tax credits or incentives which is not otherwise covered in this
1578 subsection or Section 27-77-13, and who wishes to contest the
1579 order shall, within sixty (60) days from the date the board of



1580 review mailed written notice of the order * * * being contested,
1581 file an appeal to the Board of Tax Appeals. The appeal shall be
1582 in writing and shall request a hearing and reversal or
1583 modification of the order of the board of review, specify in
1584 detail the relief requested and contain any other information that
1585 might be required by regulation, and be filed with the executive
1586 director. At the time of filing his appeal with the executive
1587 director, the taxpayer shall also file a copy of his written
1588 appeal with the board of review. Even after an appeal is filed
1589 with the Executive Director of the Board of Tax Appeals, the board
1590 of review retains the authority to amend and/or correct the order
1591 being appealed at any time prior to a decision by the Board of Tax
1592 Appeals on the appeal. Failure to timely file a written appeal
1593 with the executive director within the sixty-day period shall make
1594 the order of the board of review final and not subject to further
1595 review by the Board of Tax Appeals or a court, other than as to
1596 the issue of whether a written appeal from the order of the board
1597 of review was timely filed with the executive director. If the
1598 board of review shall not issue an order within six (6) months of
1599 a hearing, the taxpayer may treat the failure to issue an order as
1600 a denial of the relief requested in the hearing and appeal such
1601 deemed denial to the Board of Tax Appeals as provided in this
1602 section. A taxpayer's failure to file an appeal based on this
1603 deemed denial shall not prejudice or otherwise jeopardize the
1604 taxpayer's right to file an appeal with the Board of Tax Appeals



1605 upon the board of review's issuance of a subsequent order in the
1606 manner provided for in this section.

1607 (5) Upon receipt of a written appeal from an order of the
1608 board of review affirming a tax assessment, refund claim
1609 denial * * *, denial of waiver of a tag penalty, or any other
1610 action of the agency affecting a taxpayer's liability or claim to
1611 tax credits or incentives which is not otherwise covered in this
1612 subsection or Section 27-77-13, the executive director shall
1613 schedule a hearing before the Board of Tax Appeals on the appeal.
1614 A notice of this hearing shall be mailed to the taxpayer and the
1615 agency advising them of the date, time and location of hearing.
1616 The taxpayer or his designated representative shall attend the
1617 hearing unless a request is made to and granted by the Executive
1618 Director of the Board of Tax Appeals to allow the taxpayer to
1619 submit his position in writing or by electronic transmission in
1620 lieu of attendance. Failure of the taxpayer or his designated
1621 representative to attend a hearing or to submit his position in
1622 writing or by electronic transmission by the date specified by the
1623 executive director or by the hearing date, if no date was
1624 specified, shall constitute a withdrawal of the appeal.

1625 (6) (a) At any hearing before the Board of Tax Appeals on
1626 an appeal of an order of the board of review affirming a tax
1627 assessment, refund claim denial * * *, denial of waiver of a tag
1628 penalty, or any other action of the Department of Revenue
1629 affecting a taxpayer's liability or claim to tax credits or



1630 incentives which is not otherwise covered in this subsection or
1631 Section 27-77-13, two (2) members of the Board of Tax Appeals
1632 shall constitute a quorum. At the hearing, the Board of Tax
1633 Appeals shall try * * * all factual and legal issues * * * raised
1634 by the taxpayer which address the substantive or procedural
1635 propriety of the actions of the Department of Revenue being
1636 appealed, according to the law and the facts and pursuant to any
1637 procedural guidelines established by regulation.

1638 (b) At a hearing of any action brought under this
1639 section, the Board of Tax Appeals shall give no deference to the
1640 decision of the Department of Revenue or board of review or its
1641 interpretation of any law that is not contained within official
1642 regulations of the Department of Revenue, but it shall try the
1643 case de novo and conduct a full evidentiary hearing on all factual
1644 and legal issues raised by the taxpayer which address the
1645 substantive or procedural propriety of the actions being appealed.
1646 The Board of Tax Appeals shall decide all factual and legal
1647 questions presented, including those as to legality and the amount
1648 of tax or refund due as well as whether and to what extent the
1649 imposition of interest and/or penalties is warranted under the
1650 facts of the case, and if it finds that the tax assessment, denial
1651 of refund claim or other action of the agency in issue is
1652 incorrect or invalid, in whole or in part, it shall determine the
1653 amount of tax or refund due, including interest and, if
1654 applicable, penalty to date, and enter such order or judgment as



1655 it deems proper. Interest and penalty included in this
1656 determination shall be computed by the Board of Tax Appeals based
1657 on the methods for computing penalty and interest as specified by
1658 law for the type of tax in issue, and the Board of Tax Appeals
1659 shall have the same discretion as the commissioner in determining
1660 whether and to what extent such amounts are warranted under the
1661 facts of the case. The rules of evidence shall be relaxed at the
1662 hearing.

1663 (c) Any appeal to chancery court from an order of the
1664 Board of Tax Appeals resulting from this type of hearing shall
1665 include a full evidentiary judicial hearing on * * * factual and
1666 legal issues * * * raised by the taxpayer which address the
1667 substantive or procedural property of the department's action
1668 being appealed. No official transcript shall be made of this
1669 hearing before the Board of Tax Appeals.

1670 (d) After reaching a decision on the issues presented,
1671 the Board of Tax Appeals shall enter its order setting forth its
1672 findings and decision on the appeal. A copy of the order of the
1673 Board of Tax Appeals shall be mailed to the taxpayer and the
1674 agency. If the order involves an appeal of a denial of a waiver
1675 of tag penalty, a copy of the order shall also be mailed to the
1676 tax collector that imposed the penalty.

1677 (e) If the Board of Tax Appeals shall not issue an
1678 order within nine (9) months of a hearing, the taxpayer may treat
1679 the failure to issue an order as a denial of the relief requested



1680 in the hearing and appeal such deemed denial to the chancery court
1681 as provided in Section 27-77-7. A taxpayer's failure to file an
1682 appeal based on this deemed denial shall not prejudice or
1683 otherwise jeopardize the taxpayer's right to file an appeal with
1684 the chancery court upon the Board of Tax Appeals' issuance of a
1685 subsequent order in the manner provided for in Section 27-77-7.

1686 (7) If in its order the Board of Tax Appeals orders a
1687 taxpayer to pay a tax assessment, the taxpayer shall, within sixty
1688 (60) days from the date the Board of Tax Appeals mailed written
1689 notice of the order, pay the amount ordered to be paid or properly
1690 appeal the order of the Board of Tax Appeals to chancery court as
1691 provided in Section 27-77-7. After the sixty-day period, if the
1692 tax determined by the Board of Tax Appeals to be due is not paid
1693 and an appeal from the Board of Tax Appeals order has not been
1694 properly filed, the agency shall proceed to collect the tax
1695 assessment as affirmed by the Board of Tax Appeals. If in its
1696 order the Board of Tax Appeals determines that the taxpayer has
1697 overpaid his taxes and an appeal from the Board of Tax Appeals
1698 order has not been properly filed in chancery court, the agency
1699 shall, within sixty (60) days from the date the Board of Tax
1700 Appeals mailed written notice of its order, refund or credit to
1701 the taxpayer, as provided by law, the amount of overpayment as
1702 determined and set out in the order.

1703 (8) At any time after the filing of an appeal to the board
1704 of review or from the board of review to the Board of Tax Appeals



1705 under this section, an appeal can be withdrawn. Such a withdrawal
1706 of an appeal may be made voluntarily by the taxpayer or may occur
1707 involuntarily as a result of the taxpayer failing to appear at a
1708 scheduled hearing, failing to make a written submission or
1709 electronic transmission in lieu of attendance at a hearing by the
1710 date specified or by the hearing date, if no date was specified,
1711 or by any other act or failure that the board of review or the
1712 Board of Tax Appeals determines represents a failure on the part
1713 of the taxpayer to prosecute his appeal. Any voluntary withdrawal
1714 shall be in writing or by electronic transmission and sent by the
1715 taxpayer or his designated representative to the chairman of the
1716 board of review, if the appeal being withdrawn is to the board of
1717 review, or to the executive director, if the appeal being
1718 withdrawn is to the Board of Tax Appeals. If the withdrawal of
1719 appeal is involuntary, the administrative appeal body from whom
1720 the appeal is being withdrawn shall note on its minutes the
1721 involuntary withdrawal of the appeal and the basis for the
1722 withdrawal. Once an appeal is withdrawn, whether voluntary or
1723 involuntary, the action from which the appeal was taken, whether a
1724 tax assessment, a denial of refund claim, a denial of waiver of
1725 tax penalty, any other action of the agency affecting a taxpayer's
1726 liability or claim to tax credits or incentives which is not
1727 otherwise covered by subsection (1) of this section or Section
1728 27-77-13, or an order of the board of review, shall become final
1729 and not subject to further review by the board of review, the



1730 Board of Tax Appeals or a court, other than as to the issue of
1731 whether a taxpayer's actions or inactions constituted a failure on
1732 the part of the taxpayer to prosecute his appeal. The agency
1733 shall then proceed in accordance with law based on such final
1734 action.

1735 (9) Nothing in this section shall bar a taxpayer from timely
1736 applying to the commissioner as otherwise provided by law for a
1737 tax refund or for a revision in tax.

1738 (10) Any appeal or other filing with the board of review or
1739 Board of Tax Appeals pursuant to this section shall be considered
1740 timely if it is hand delivered, mailed, postmarked, shipped, or
1741 electronically transmitted via electronic mail, electronic filing
1742 or facsimile by midnight of the due date for such filing. The
1743 timeliness of such filing shall be determined in all instances
1744 based on the taxpayer's local time zone. If the due date for any
1745 appeal or other filing with the board of review of Board of Tax
1746 Appeals should fall on a Saturday, Sunday, official state holiday,
1747 or other day on which the board of review or Board of Tax Appeals
1748 is closed, the due date for the filing shall be the next business
1749 day in which the board of review or Board of Tax Appeals is open.

1750 **SECTION 18.** Section 27-77-7, Mississippi Code of 1972, is
1751 amended as follows:

1752 27-77-7. (1) The findings and order of the Board of Tax
1753 Appeals entered under Section 27-77-5 shall be final unless the
1754 agency or the taxpayer shall, within sixty (60) days from the date



1755 the Board of Tax Appeals mailed written notice of the order, file
1756 a petition in the chancery court appealing the order. If the
1757 petition under this subsection is filed by the taxpayer, the
1758 petition shall be filed against the Department of Revenue as
1759 respondent. If the petition under this subsection is filed by the
1760 agency, the petition shall be filed against the taxpayer as
1761 respondent. The petition shall contain a concise statement of the
1762 facts as contended by the petitioner, identify the order from
1763 which the appeal is being taken and set out the type of relief
1764 sought. If in the action, the taxpayer is seeking a refund or
1765 credit for an alleged overpayment of sales or withholding
1766 tax * * *, the taxpayer shall allege in the petition or in his
1767 answer, where the appeal is filed by the agency, that he alone
1768 bore the burden of the tax sought to be refunded or credited and
1769 did not directly or indirectly collect the tax from anyone else;
1770 however, this requirement shall not apply in any case involving a
1771 claim for incentives based on payroll withholding. The respondent
1772 to the petition has thirty (30) days from the date of service of
1773 the petition to file a cross-appeal.

1774 (2) A petition under subsection (1) of this section shall be
1775 filed in the chancery court of the county or judicial district in
1776 which the taxpayer has a place of business or in the Chancery
1777 Court of the First Judicial District of Hinds County, Mississippi;
1778 however, a resident taxpayer may file the petition in the chancery
1779 court of the county or judicial district in which he is a



1780 resident. If both the agency and the taxpayer file a petition
1781 under subsection (1) of this section, the appeals shall be
1782 consolidated and the chancery court where the taxpayer filed his
1783 petition shall have jurisdiction over the consolidated appeal.

1784 (3) * * * No taxpayer appealing an order of the Board of Tax
1785 Appeals under this section shall be required to post security or a
1786 security bond, or otherwise pay to the agency, under protest or
1787 otherwise, * * * any contested taxes, interest, penalties or other
1788 amounts. The taxpayer shall pay to the agency any tax included in
1789 the assessment which he is not contesting. If the petition
1790 initiating the appeal is filed by the taxpayer, the payment of the
1791 uncontested tax shall be made prior to the expiration of the
1792 sixty-day time period for filing a petition under subsection (1)
1793 of this section. If the petition initiating the appeal is filed
1794 by the agency, the payment of the uncontested tax shall be made
1795 prior to the expiration of the sixty-day time period for the
1796 filing of the petition. Failure of the taxpayer to timely pay the
1797 uncontested tax shall bar the taxpayer from obtaining a reduction,
1798 abatement and/or refund of any contested tax in the appeal until
1799 the uncontested tax is paid, but * * * shall not result in the
1800 taxpayer's appeal or cross-appeal being dismissed * * * or
1801 judgment being entered granting the agency the relief it
1802 requested.

1803 (4) In an action under this section resulting from an order
1804 of the Board of Tax Appeals involving a refund claim denial, the



1805 agency shall refund or credit to the taxpayer, as provided by law,
1806 the amount of any overpayment included in the refund claim which
1807 the agency does not contest. If the petition initiating the
1808 appeal is filed by the agency, the uncontested overpayment shall
1809 be paid or credited to the taxpayer prior to the expiration of the
1810 sixty-day time period for filing a petition under subsection (1)
1811 of this section. If the petition initiating the appeal is filed
1812 by the taxpayer, such uncontested overpayment shall be paid or
1813 credited to the taxpayer prior to the expiration of the thirty-day
1814 time period for the filing of an answer or other response to the
1815 petition as provided in subsection (5) of this section. Failure
1816 of the agency to timely pay or credit the uncontested overpayment
1817 to the taxpayer shall bar the agency from obtaining an
1818 affirmation, in whole or in part, of the refund claim denial in
1819 issue until the payment or credit is made, * * * but shall not
1820 result in the agency's appeal or cross-appeal being
1821 dismissed * * * or judgment being entered granting the taxpayer
1822 the relief he requested * * *.

1823 (5) Upon the filing of the petition under subsection (1) of
1824 this section, the clerk of the court shall issue a summons to the
1825 respondent requiring the respondent to answer or otherwise respond
1826 to the petition within thirty (30) days of service. Where the
1827 agency is the respondent, the summons shall be served on the
1828 agency by personal service on the commissioner as the chief
1829 executive officer of the agency. The chancery court in which a



1830 petition under subsection (1) of this section is properly filed
1831 shall have jurisdiction to hear and determine the cause or issues
1832 joined as in other cases. In any petition, cross-appeal or answer
1833 in which the taxpayer is seeking a refund or credit for an alleged
1834 overpayment of sales or withholding tax * * *, the taxpayer shall
1835 prove by a preponderance of the evidence that he alone bore the
1836 burden of the tax sought to be refunded or credited and did not
1837 directly or indirectly collect the tax from anyone else; however,
1838 this requirement shall not apply in any case involving a claim for
1839 incentives based on withholding taxes. At trial of any action
1840 brought under this section, the chancery court shall give no
1841 deference to the decision of the Board of Tax Appeals, the board
1842 of review, or the Department of Revenue * * * or its
1843 interpretation of any law * * * that is not contained within
1844 official regulations * * * of the department * * *, but it shall
1845 try the case de novo and conduct a full evidentiary judicial
1846 hearing on * * * factual and legal issues raised by the taxpayer
1847 which address the substantive or procedural propriety of the
1848 actions of the Department of Revenue being appealed. The chancery
1849 court is expressly prohibited from trying any action filed
1850 pursuant to this section using the more limited standard of review
1851 specified for appeals in Section 27-77-13 of this chapter. Based
1852 on the evidence presented at trial, the chancery court shall
1853 determine whether the party bringing the appeal has proven by a
1854 preponderance of the evidence or a higher standard if required by



1855 the issues raised, that he is entitled to any or all of the relief
1856 he has requested. The chancery court shall decide all factual and
1857 legal questions presented, including those as to legality and the
1858 amount of tax or refund due as well as whether and to what extent
1859 the imposition of interest and/or penalties are warranted under
1860 the facts of the case, and if it finds that the tax
1861 assessment * * *, denial of refund claim or other action of the
1862 agency in issue is incorrect or invalid, in whole or in part, it
1863 shall determine the amount of tax or refund due, including
1864 interest and, if applicable, penalty to date, and enter such order
1865 or judgment as it deems proper. Interest and penalty included in
1866 this determination shall be computed by the court based on the
1867 methods for computing penalty and interest as specified by law for
1868 the type of tax in issue, and the court shall have the same
1869 discretion as the commissioner in determining whether and to what
1870 extent such amounts are warranted under the facts of the case.
1871 When the chancery court determines that an overpayment exists, the
1872 determination as to whether such overpayment shall be refunded to
1873 the taxpayer or credited against the taxpayer's future taxes shall
1874 be made by the chancery court based on the method for handling
1875 overpayments as specified by the law for the type of tax in issue.
1876 Either the agency or the taxpayer, or both, shall have the right
1877 to appeal from the order of the chancery court to the Supreme
1878 Court as in other cases. * * *



1879 **SECTION 19.** Sections 14, 15 and 16 of this act shall apply
1880 to all matters pending before any agency on the effective date of
1881 this act.

1882 **SECTION 20.** This act shall take effect and be in force from
1883 and after its passage.

