

REPORT OF CONFERENCE COMMITTEE

MR. SPEAKER AND MR. PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H. B. No. 799: Taxation; authorize alternate method of apportioning for income tax, revise appellate procedure for appeals.

We, therefore, respectfully submit the following report and recommendation:

1. That the Senate recede from its Amendment No. 1.
2. That the House and Senate adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

106 **SECTION 1.** Section 27-7-23, Mississippi Code of 1972, as
107 amended by Senate Bill No. 2933, 2014 Regular Session, is amended
108 as follows:

109 27-7-23. (a) **Definitions.**

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

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

116 (B) The regular maintenance in Mississippi of an
117 inventory of merchandise or material for sale, distribution or



118 manufacture, regardless of whether kept on the premises of the
119 taxpayer or otherwise; or

120 (C) The selling or distributing of merchandise to
121 customers in Mississippi directly from a company-owned or operated
122 vehicle when title to the merchandise is transferred from the
123 seller or distributor to the customer at the time of the sale or
124 distribution (transient selling); or

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

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

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

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



143 business income must establish by a preponderance of the evidence
144 that the income has been incorrectly classified.

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

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

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

166 (B) Functional test. Business income includes
167 income from tangible and intangible property if the acquisition,



168 management and/or disposition of the property constitute integral
169 parts of the taxpayer's regular trade or business operation.

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

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



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

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

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



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

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

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

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



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

242 (1) The tax imposed by this article shall apply to the
243 entire net income of a taxable nonresident derived from
244 employment, trade, business, professional, personal service or
245 other activity for financial gain or profit, performed or carried
246 on within Mississippi, including the rental of real or personal
247 property located within this state or for use herein and including
248 the sale or exchange or other disposition of tangible or
249 intangible property having a situs in Mississippi.

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

257 (3) A taxable nonresident shall be allowed to deduct
258 expenses, interest, taxes, losses, bad debts, depreciation and
259 similar business expenses only to the extent that they are
260 allowable under this article and are attributable to the
261 production of income allocable to and taxable by the State of
262 Mississippi. As to allowable deductions essentially personal in
263 nature, such as contributions to charitable organizations, medical
264 expenses, taxes, interest and the optional standard deduction,



265 such taxable nonresident shall be allowed deductions therefor in
266 the ratio that the net income from sources within Mississippi
267 bears to the total net income from all sources of such taxable
268 nonresident, computed as if such taxable nonresident * * * was a
269 resident of Mississippi.

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

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

280 (2) Allocation and apportionment of income.

281 (A) Except as provided in Sections 27-7-24,
282 27-7-24.1, 27-7-24.3, 27-7-24.5 * * *, 27-7-24.7 and 27-7-24.8,
283 Mississippi Code of 1972, any corporation or organization having
284 business income from business activity which is taxable both
285 within and without this state shall allocate and apportion its net
286 business income as prescribed by regulations enacted by the
287 commissioner. If the business income of the corporation is
288 derived solely from property owned or business done in this state
289 and the corporation is not taxable in another state, the entire



290 business income shall be allocated to this state. A corporation
291 is taxable in another state if, in that state the corporation is
292 subject to a net income tax, or a franchise tax measured by net
293 income, or if that state has jurisdiction to subject the
294 corporation to a net income tax regardless of whether the state
295 does or does not subject the corporation to a net income tax.

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

302 (i) Separate accounting;

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

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

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

311 (C) In any instance in which a taxpayer requests
312 or the commissioner requires the use of any of the alternative
313 apportionment methods in subparagraph (B) of this paragraph, the
314 party requesting or requiring the method shall bear the burden of



315 proving by preponderance of the evidence in any administrative or
316 judicial proceeding that the methods set forth in this section or
317 the commissioner's regulations do not fairly represent the extent
318 of the taxpayer's business activity in this state and that the
319 proposed method more fairly represents that activity than any
320 other reasonable method available. The alternative apportionment
321 authority specified in this subparagraph (D) is intended to be
322 invoked only in limited and unique, nonrecurring circumstances
323 where the standard apportionment provisions contained in the
324 statutes and regulations produce unanticipated results that do not
325 fairly represent the extent of the taxpayer's business activity in
326 this state.

327 (D) The commissioner shall be prohibited from
328 assessing any penalties related to a deficiency arising from
329 requiring the use of an alternative apportionment method under
330 subparagraph (B) of this paragraph unless the commissioner shall
331 establish by preponderance of the evidence that the taxpayer's
332 method was without reasonable basis or was not in accordance with
333 existing statutes or regulations.

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

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



340 (B) Net rents and royalties from tangible personal
341 property are allocable to the state in which the property is used,
342 or to this state in their entirety if the corporation's commercial
343 domicile is in this state and the corporation is not organized
344 under the laws of or taxable in the state in which the property is
345 utilized.

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

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

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

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

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



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

367 (I) All expenses connected with earning
368 nonbusiness income, such as interest, taxes, general and
369 administrative expenses and such other expenses relating to the
370 production of nonbusiness income, shall be deducted from gross
371 nonbusiness income. Nonbusiness interest expense shall be
372 computed by using the ratio of nonbusiness assets to total assets
373 applied to total interest expense.

374 (d) **Foreign lenders.**

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



389 (2) In the case of any foreign lender exempted in
390 paragraph (1) of this subsection, interest income received on any
391 loan finalized or consummated after January 1, 1977, shall be
392 excluded from Mississippi gross income and the net profits derived
393 therefrom shall be exempt from the Mississippi income tax levy for
394 the life of such loan.

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

406 (f) **Bond requirements.** Any individual or corporation
407 subject to the tax imposed by this article, engaged in the
408 business of performing contracts which may require the payment of
409 net income taxes, may be required by the commissioner, before
410 entering into the performance of any contract or contracts the
411 consideration of which is more than Ten Thousand Dollars
412 (\$10,000.00), to execute and file a good and valid bond with a
413 surety company authorized to do business in this state, or with



414 sufficient sureties to be approved by the commissioner,
415 conditioned that all taxes which may accrue to the State of
416 Mississippi will be paid when due. Provided, however, that such
417 bond shall not exceed five percent (5%) of the total contracts
418 entered into during the taxable period, and, provided further,
419 that any taxpayer, in lieu of furnishing such bond, may pay the
420 maximum sum required herein as advance payment of taxes due on the
421 net income realized from any contract or contracts performed or
422 completed in this state.

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

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



439 organized, shall allocate and apportion its net income as provided
440 in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and
441 27-7-24.7, Mississippi Code of 1972.

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

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

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



- 464 (a) Separate accounting;
- 465 (b) The exclusion of any one or more of the factors;
- 466 (c) The inclusion of one or more additional factors
- 467 which will fairly represent the taxpayer's business activity in
- 468 this state; or
- 469 (d) The employment of any other method to effectuate an
- 470 equitable allocation and apportionment of the taxpayer's income.

471 In any instance in which a taxpayer requests or the

472 commissioner requires the use of any of the alternative

473 apportionment methods in this subsection, the party requesting or

474 requiring the method shall bear the burden of proving by

475 preponderance of the evidence in any administrative or judicial

476 proceeding that the methods set forth in Sections 27-7-24,

477 27-7-24.1, 27-7-24.3, 27-7-24.5 and 27-7-24.7 do not fairly

478 represent the extent of the taxpayer's business activity in this

479 state and that the proposed method more fairly represents that

480 activity than any other reasonable method available. The

481 alternative apportionment authority specified in this subsection

482 is intended to be invoked only in limited and unique, nonrecurring

483 circumstances where the standard apportionment provisions

484 contained in the statutes and regulations produce unanticipated

485 results that do not fairly represent the extent of the taxpayer's

486 business activity in this state.

487 (5) The commissioner shall be prohibited from assessing any

488 penalties related to a deficiency arising from requiring the use



489 of an alternative apportionment method under subsection (4) of
490 this section unless the commissioner shall establish by
491 preponderance of the evidence that the taxpayer's method was
492 without reasonable basis or was not in accordance with existing
493 statutes or regulations.

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

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

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



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

535 (iii) The commissioner shall not require the
536 filing of a combined return pursuant to the authority granted
537 under subparagraph (ii) of this paragraph until regulations shall
538 have been enacted specifying the criteria and circumstances that



539 form the basis for meeting the preponderance of the evidence
540 standard required to support a conclusion that intercompany
541 transactions of such taxable corporation have resulted in the
542 improper shifting of taxable income from a taxpayer to another
543 member or members of its affiliated group not subject to tax under
544 this article, or that the intercompany transactions of such
545 corporations have resulted in the improper shifting of taxable
546 income between members of the included affiliated group.

547 (iv) The commissioner shall be prohibited from
548 assessing any penalties related to a deficiency arising from the
549 exercise of the authority granted under subparagraph (ii) of this
550 paragraph unless the commissioner shall establish by preponderance
551 of the evidence that the taxpayer's filing method was without
552 reasonable basis or the intercompany transactions at issue lacked
553 any material nontax business purpose.

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



564 a fractional part of the year, the combined return shall include
565 the income of such corporation for such part of the year as it is
566 a member of the affiliated group.

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

576 (d) As used in this article, the term "affiliated
577 group" means one or more corporations connected through stock
578 ownership with a common parent corporation where at least eighty
579 percent (80%) of the voting power of all classes of stock and at
580 least eighty percent (80%) of each class of the nonvoting stock of
581 each of the member corporations, except the common parent
582 corporation, is owned directly by one or more of the other member
583 corporations; and the common parent corporation owns directly
584 stock possessing at least eighty percent (80%) of the voting power
585 of all classes of stock and at least eighty percent (80%) of each
586 class of the nonvoting stock of at least one (1) of the other
587 member corporations. As used in this subsection, the term "stock"



588 does not include nonvoting stock which is limited and preferred as
589 to dividends.

590 (e) If a corporation elects or is required to file
591 returns on a combined basis, all subsequent returns shall be made
592 upon the same basis unless permission to change the basis is
593 granted by the commissioner, or unless the commissioner requires a
594 change in the basis.

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

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

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

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

611 27-7-51. (1) If, upon examination of a return made under
612 the provisions of this article, it appears that the correct amount



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

629 (2) In the case of an overpayment of tax, interest shall be
630 computed under the provisions of Section 27-7-315. In the case of
631 an underpayment of tax, interest at the rate of one percent (1%)
632 per month, except as otherwise provided in subsection (6) of this
633 section, from the due date of the return may be added or assessed
634 in addition to the additional tax due as hereinabove provided in
635 subsection (1) of this section.

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



638 amount assessed a penalty of one-half of one percent (1/2 of 1%)
639 of the amount of the additional tax if the failure is for not more
640 than one (1) month, with an additional one-half of one percent
641 (1/2 of 1%) for each additional month or fraction thereof during
642 which the failure continues, not to exceed twenty-five percent
643 (25%) in the aggregate.

644 (4) Where the reported net income of a taxpayer is increased
645 by the Internal Revenue Service, * * * and the taxpayer * * *,
646 without action by the commissioner, amends a return filed under
647 this article on the basis of a change in taxable income made by
648 the Internal Revenue Service, and pays the additional tax due
649 within thirty (30) days after agreeing to the federal change (and
650 has received statement of the federal changes to which agreement
651 has been made or payment thereof), * * * the commissioner may add
652 interest to the additional tax at the rate of one percent (1%) per
653 month, except as otherwise provided in subsection (6) of this
654 section, from due date of the original return. If the additional
655 tax, based on changes in taxable income by the Internal Revenue
656 Service, is assessed by the commissioner under subsection (1) of
657 this section, in addition to the interest there may be added a
658 penalty of one-half of one percent (1/2 of 1%) of the additional
659 tax due if the failure is for not more than one (1) month, with an
660 additional one-half of one percent (1/2 of 1%) for each additional
661 month or fraction thereof during which the failure to pay
662 continues, not to exceed twenty-five percent (25%) in the



663 aggregate, unless it is shown that the failure is due to
664 reasonable cause and not due to willful neglect.

665 (5) In the case of a taxpayer who * * * appeals the decision
666 of the Board of Tax Appeals * * * and the tax assessment or a part
667 of the assessment is upheld by the chancery court and/or the
668 Supreme Court, the assessment * * * may bear interest at the rate
669 of one percent (1%) per month, except as otherwise provided in
670 subsection (6) of this section, from the due date until paid.

671 (6) For taxes assessed by the commissioner on or after
672 January 1, 2015, the rate of any interest assessed under this
673 section shall be:

674 (a) Nine-tenths of one percent (9/10 of 1%) per month
675 for such taxes assessed on or after January 1, 2015, and before
676 January 1, 2016;

677 (b) Eight-tenths of one percent (8/10 of 1%) per month
678 for such taxes assessed on or after January 1, 2016, and before
679 January 1, 2017;

680 (c) Seven-tenths of one percent (7/10 of 1%) per month
681 for such taxes assessed on or after January 1, 2017, and before
682 January 1, 2018;

683 (d) Six-tenths of one percent (6/10 of 1%) per month
684 for such taxes assessed on or after January 1, 2018, and before
685 January 1, 2019; and

686 (e) One-half of one percent (1/2 of 1%) per month for
687 such taxes assessed on or after January 1, 2019.



688 (* * *7) (a) Nothing in this section shall be construed as
689 authorizing a refund of taxes for claims pursuant to the United
690 States Supreme Court decision of Davis v. Michigan Department of
691 Treasury, 109 S.Ct. 1500 (1989). These taxes were not incorrectly
692 and/or erroneously collected as contemplated by this chapter.

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

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

700 27-7-53. (1) (a) Except as otherwise provided in this
701 section, if a return is timely filed by the taxpayer but the tax
702 due is not paid, the commissioner shall make his assessment of tax
703 due by mail or by personal delivery of the assessment to the
704 taxpayer, which assessment shall constitute notice and demand for
705 payment. The taxpayer shall be given a period of sixty (60) days
706 from the date * * * the commissioner mailed or hand delivered the
707 notice in which to pay the tax due, including penalty and interest
708 as hereinafter provided, and if the sum is not paid within the
709 period of sixty (60) days, the commissioner shall proceed to
710 collect it under the provisions of Sections 27-7-55 through
711 27-7-67 of this article; provided that within the period of sixty



712 (60) days the taxpayer may appeal to the board of review as
713 provided by law.

714 (b) (i) If an individual return is timely filed by the
715 taxpayer and the amount of tax liability (determined without
716 regard to interest, penalties, additions to the tax and additional
717 amounts) of the taxpayer exceeds Seventy-five Dollars (\$75.00) but
718 does not exceed Three Thousand Dollars (\$3,000.00), the taxpayer
719 may request to pay the tax liability through an installment
720 agreement.

721 (ii) If an individual return is timely filed by
722 the taxpayer and the amount of tax liability (determined without
723 regard to interest, penalties, additions to the tax and additional
724 amounts) of the taxpayer exceeds Three Thousand Dollars
725 (\$3,000.00) and the taxpayer has entered into an installment
726 agreement with the Internal Revenue Service to pay federal income
727 taxes on income earned during the same taxable year during which
728 the state income tax liability was incurred, the taxpayer may
729 request to pay the tax liability through an installment agreement.

730 (iii) The taxpayer must file such a request with
731 the return and must provide all information required by the
732 commissioner.

733 (iv) If the commissioner determines a taxpayer is
734 financially unable to pay the tax liability, the commissioner may
735 enter into an agreement to accept payment of the tax liability in
736 installments if:



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

740 a. Failed to file any return required by
741 this chapter,

742 b. Failed to pay any tax required by
743 this chapter, or

744 c. Entered into an installment agreement
745 under this paragraph (b);

746 2. The agreement requires full payment of the
747 tax liability in equal installments within twelve (12) months from
748 the date the return was filed if the tax liability falls within
749 the provisions of subparagraph (i) of this paragraph, or within
750 sixty (60) months from the date the return was filed if the tax
751 liability falls within the provisions of subparagraph (ii) of this
752 paragraph; and

753 3. The taxpayer agrees to comply with the
754 terms of the agreement.

755 (v) Payments made through an installment agreement
756 shall be subject to the interest provisions of subsection (3) of
757 this section.

758 (vi) The commissioner may terminate an installment
759 agreement entered into under this paragraph (b) if he determines
760 the taxpayer provided inaccurate or incomplete information before



761 the agreement was entered into or he believes the collection of
762 the tax to which the agreement relates is in jeopardy.

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

766 1. Pay any installment due under the
767 agreement;

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

770 3. Provide a statement of financial condition
771 required by the commissioner.

772 (2) If no return is made by a taxpayer required by this
773 chapter to make a return, the commissioner shall determine the
774 taxpayer's liability from the best information available, which
775 determination shall be prima facie correct for the purpose of this
776 article, and the commissioner shall forthwith make an assessment
777 of the tax so determined to be due by mail or by personal delivery
778 of the assessment to the taxpayer, which assessment shall
779 constitute notice and demand for payment. The taxpayer shall be
780 given a period of sixty (60) days from the date * * * the
781 commissioner mailed or hand delivered the notice in which to pay
782 the tax due, including penalty and interest as hereinafter
783 provided, and if the sum is not paid within the period of sixty
784 (60) days, the commissioner shall proceed to collect it under the
785 provisions of Sections 27-7-55 through 27-7-67 of this article;



786 provided that within the period of sixty (60) days the taxpayer
787 may appeal to the board of review as provided by law.

788 (3) (a) Interest at the rate of one percent (1%) per month,
789 except as otherwise provided in this subsection, from the due date
790 of the return * * * may be added or assessed in addition to the
791 tax due as provided in subsections (1) and (2) of this section.

792 (b) For taxes assessed by the commissioner on or after
793 January 1, 2015, the rate of any interest assessed under this
794 section shall be:

795 (i) Nine-tenths of one percent (9/10 of 1%) per
796 month for such taxes assessed on or after January 1, 2015, and
797 before January 1, 2016;

798 (ii) Eight-tenths of one percent (8/10 of 1%) per
799 month for such taxes assessed on or after January 1, 2016, and
800 before January 1, 2017;

801 (iii) Seven-tenths of one percent (7/10 of 1%) per
802 month for such taxes assessed on or after January 1, 2017, and
803 before January 1, 2018;

804 (iv) Six-tenths of one percent (6/10 of 1%) per
805 month for such taxes assessed on or after January 1, 2018, and
806 before January 1, 2019; and

807 (v) One-half of one percent (1/2 of 1%) per month
808 for taxes such taxes assessed on or after January 1, 2019.

809 (4) In case of failure to file a return as required by this
810 chapter, there may be added to the amount required to be shown as



811 tax on the return a penalty of five percent (5%) of the total
812 amount of the deficiency or delinquency of the tax if the failure
813 is for not more than one (1) month, with an additional five
814 percent (5%) for each additional month or fraction thereof during
815 which the failure continues, not to exceed twenty-five percent
816 (25%) in the aggregate. The failure to file a return penalty
817 shall not be less than One Hundred Dollars (\$100.00).

818 (5) In case of failure to pay the amount shown as tax on any
819 return specified in subsections (1) and (2) of this section on or
820 before the date prescribed for payment of the tax, determined with
821 regard to any extension of time for payment or installment
822 agreement, or both, there may be added to the amount shown as tax
823 on the return one-half of one percent (1/2 of 1%) of the total
824 amount of the deficiency or delinquency of the tax if the failure
825 is for not more than one (1) month, with an additional one-half of
826 one percent (1/2 of 1%) for each additional month or fraction
827 thereof during which the failure continues, not to exceed
828 twenty-five percent (25%) in the aggregate.

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

831 27-7-315. (1) If any overpayment of any tax, interest or
832 penalty levied or provided for by Article 1 of this chapter, or in
833 this article, is not refunded to the taxpayer as provided in
834 Section 27-7-313 within six (6) months after the final date for
835 filing returns as prescribed by law, the taxpayer may treat the



836 failure to refund as a denial of a refund claim and appeal in the
837 manner provided for in Section 27-77-5. A taxpayer's failure to
838 file an appeal based on this deemed denial shall not prejudice or
839 otherwise jeopardize the taxpayer's right to file an appeal upon a
840 subsequent formal denial in the manner provided for in Section
841 27-77-5.

842 (2) If any overpayment of tax as reflected on a return
843 * * *, amended return * * * or any other form of claim for refund
844 or determined to be due by the commissioner * * * or department
845 when no overpayment is shown on a return * * *, amended return or
846 other form of claim for refund, is not refunded within ninety (90)
847 days after (a) the prescribed due date of the return, (b) the date
848 the return is filed, (c) the date a claim for refund is filed, or
849 (d) the date the commissioner * * *, the Board of Tax Appeals or
850 Court determines a refund as being due when no overpayment is
851 shown on a return * * *, amended return or other form of claim for
852 refund, whichever is later, interest at the rate of one percent
853 (1%) per month, except as otherwise provided in this section,
854 shall be allowed on the overpayment computed for the period after
855 expiration of the ninety-day period provided in this subsection to
856 the date of payment. For any overpayment reflected on a return or
857 amended return filed on or after January 1, 2015, or any
858 overpayment based on a determination of refund by the
859 commissioner, the Board of Tax Appeals or Court on or after
860 January 1, 2015, where no overpayment is shown on a return or



861 amended return, the rate of interest allowed on the overpayment
862 shall be:

863 (a) Nine-tenths of one percent (9/10 of 1%) per month
864 for any overpayment reflected on a return or amended return filed
865 on or after January 1, 2015, and before January 1, 2016, or any
866 overpayment based on a determination of refund by the
867 commissioner, the Board of Tax Appeals or Court on or after
868 January 1, 2015, and before January 1, 2016, where no overpayment
869 is shown on a return or amended return;

870 (b) Eight-tenths of one percent (8/10 of 1%) per month
871 for any overpayment reflected on a return or amended return filed
872 on or after January 1, 2016, and before January 1, 2017, or any
873 overpayment based on a determination of refund by the
874 commissioner, the Board of Tax Appeals or Court on or after
875 January 1, 2016, and before January 1, 2017, where no overpayment
876 is shown on a return or amended return;

877 (c) Seven-tenths of one percent (7/10 of 1%) per month
878 for any overpayment reflected on a return or amended return filed
879 on or after January 1, 2017, and before January 1, 2018, or any
880 overpayment based on a determination of refund by the
881 commissioner, the Board of Tax Appeals or Court on or after
882 January 1, 2017, and before January 1, 2018, where no overpayment
883 is shown on a return or amended return;

884 (d) Six-tenths of one percent (6/10 of 1%) per month
885 for any overpayment reflected on a return or amended return filed



886 on or after January 1, 2018, and before January 1, 2019, or any
887 overpayment based on a determination of refund by the
888 commissioner, the Board of Tax Appeals or Court on or after
889 January 1, 2018, and before January 1, 2019, where no overpayment
890 is shown on a return or amended return;

891 (b) One-half of one percent (1/2 of 1%) per month for
892 any overpayment reflected on a return or amended return filed on
893 or after January 1, 2019, or any overpayment based on a
894 determination of refund by the commissioner, the Board of Tax
895 Appeals or Court on or after January 1, 2019, where no overpayment
896 is shown on a return or amended return.

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

899 27-7-327. Taxpayers subject to the requirements of estimated
900 tax payments for an income year ending after December 31, 1983,
901 shall estimate an amount not less than eighty percent (80%) of the
902 tax actually due in the case of an individual or, except as
903 otherwise provided in Section 27-7-329(f), an amount not less than
904 ninety percent (90%) of the tax actually due in the case of a
905 corporation. Any corporate taxpayer which either fails to file
906 the required estimated tax returns and pay the tax within the time
907 prescribed, or, except as otherwise provided in Section
908 27-7-329(f), which underestimates the required amount of the
909 estimated tax shall be liable for a penalty in the amount of ten
910 percent (10%) of the amount unpaid plus interest at the rate of



911 one percent (1%) per month on such amount, except as otherwise
912 provided in this section. Any individual taxpayer who either
913 fails to file the required estimated tax returns and pay the tax
914 within the time prescribed, or who underestimates the required
915 amount of the estimated tax shall be liable for interest at the
916 rate of one percent (1%) per month on such amount, except as
917 otherwise provided in this section. For taxes assessed by the
918 commissioner on or after January 1, 2015, the rate of any interest
919 assessed under this section shall be:

920 (a) Nine-tenths of one percent (9/10 of 1%) per month
921 for such taxes assessed on or after January 1, 2015, and before
922 January 1, 2016;

923 (b) Eight-tenths of one percent (8/10 of 1%) per month
924 for such taxes assessed on or after January 1, 2016, and before
925 January 1, 2017;

926 (c) Seven-tenths of one percent (7/10 of 1%) per month
927 for such taxes assessed on or after January 1, 2017, and before
928 January 1, 2018;

929 (d) Six-tenths of one percent (6/10 of 1%) per month
930 for such taxes assessed on or after January 1, 2018, and before
931 January 1, 2019; and

932 (e) One-half of one percent (1/2 of 1%) per month for
933 such taxes assessed on or after January 1, 2019.

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



936 27-7-345. Any taxpayer who either fails to file a required
937 return within the time prescribed, or who fails to remit the tax
938 or remits less than the amount due under the return, shall be
939 liable for the following penalties:

940 (a) (i) If the failure to file a return within the
941 time prescribed, or the failure to pay the tax or any part
942 thereof, was not the result of any fraudulent intent, the taxpayer
943 shall be liable for a penalty in the amount of ten percent (10%)
944 of the total amount of deficiency or delinquency in the tax, plus
945 interest on the amount of tax due at the rate of one percent (1%)
946 per month, except as otherwise provided in this paragraph (a), on
947 the amount not paid, from the date such tax was due until paid,
948 and such amount shall be added to the liability of the taxpayer
949 unless such failure was due to reasonable cause.

950 (ii) For taxes assessed by the commissioner on or
951 after January 1, 2015, the rate of any interest assessed under
952 this section shall be:

953 1. Nine-tenths of one percent (9/10 of 1%)
954 per month for such taxes assessed on or after January 1, 2015, and
955 before January 1, 2016;

956 2. Eight-tenths of one percent (8/10 of 1%)
957 per month for such taxes assessed on or after January 1, 2016, and
958 before January 1, 2017;



959 3. Seven-tenths of one percent (7/10 of 1%)
960 per month for such taxes assessed on or after January 1, 2017, and
961 before January 1, 2018;

962 4. Six-tenths of one percent (6/10 of 1%) per
963 month for such taxes assessed on or after January 1, 2018, and
964 before January 1, 2019; and

965 5. One-half of one percent (1/2 of 1%) per
966 month for such taxes assessed on or after January 1, 2019.

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

974 (c) If the failure to file an information return or to
975 furnish a required statement within the time prescribed was not
976 the result of any fraudulent intent, the taxpayer shall be liable
977 for a penalty of Five Dollars (\$5.00) per statement, with a
978 minimum of Two Hundred Fifty Dollars (\$250.00) up to a maximum of
979 Ten Thousand Dollars (\$10,000.00) per reporting account.

980 (d) If the failure to file an information return or to
981 furnish a required statement was the result of intentional
982 disregard of filing requirements, the taxpayer shall be liable for
983 a penalty of Twenty-five Dollars (\$25.00) per statement, with a



984 minimum of Two Hundred Fifty Dollars (\$250.00) up to a maximum of
985 Fifty Thousand Dollars (\$50,000.00) per reporting account.

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

988 27-13-23. (1) If a return is timely filed by the taxpayer
989 but the tax is not paid, the commissioner shall make his
990 assessment of tax due by mail or by personal delivery of the
991 assessment to the taxpayer, which assessment shall constitute
992 notice and demand for payment. The taxpayer shall be given a
993 period of sixty (60) days from the date * * * the commissioner
994 mailed or hand delivered the notice in which to pay the tax due,
995 including penalty and interest as provided in this section, and if
996 the sum is not paid within the sixty-day period, the commissioner
997 shall proceed to collect it under the provisions of Sections
998 27-13-29 through 27-13-41 of this chapter; provided that within
999 the sixty-day period the taxpayer may appeal to the board of
1000 review as provided by law.

1001 (2) If no return is made by a taxpayer required by this
1002 chapter to make a return, the commissioner shall determine the
1003 taxpayer's liability from the best information available, which
1004 determination shall be prima facie correct for the purpose of this
1005 chapter, and the commissioner shall forthwith make an assessment
1006 of the tax so determined to be due by mail or by personal delivery
1007 of the assessment to the taxpayer, which assessment shall
1008 constitute notice and demand for payment. The taxpayer shall be



1009 given a period of sixty (60) days from the date * * * the
1010 commissioner mailed or hand delivered the notice in which to pay
1011 the tax due, including penalty and interest as provided in this
1012 section, and if the sum is not paid within the sixty-day period,
1013 the commissioner shall proceed to collect it under the provisions
1014 of Sections 27-13-29 through 27-13-41 of this chapter; provided
1015 that within the sixty-day period the taxpayer may appeal to the
1016 board of review as provided by law.

1017 (3) (a) Except as otherwise provided in this subsection,
1018 interest at the rate of one percent (1%) per month on the total
1019 amount of the deficiency or delinquency of the tax from the due
1020 date of the return * * * may be added or assessed in addition to
1021 the tax due as provided in subsections (1) and (2) of this
1022 section.

1023 (b) For taxes assessed by the commissioner on or after
1024 January 1, 2015, the rate of any interest assessed under this
1025 section shall be:

1026 (i) Nine-tenths of one percent (9/10 of 1%) per
1027 month for such taxes assessed on or after January 1, 2015, and
1028 before January 1, 2016;

1029 (ii) Eight-tenths of one percent (8/10 of 1%) per
1030 month for such taxes assessed on or after January 1, 2016, and
1031 before January 1, 2017;



1032 (iii) Seven-tenths of one percent (7/10 of 1%) per
1033 month for such taxes assessed on or after January 1, 2017, and
1034 before January 1, 2018;

1035 (iv) Six-tenths of one percent (6/10 of 1%) per
1036 month for such taxes assessed on or after January 1, 2018, and
1037 before January 1, 2019; and

1038 (v) One-half of one percent (1/2 of 1%) per month
1039 for such taxes assessed on or after January 1, 2019.

1040 (4) In case of failure to file a return as required by this
1041 chapter, unless it can be shown that the failure is due to
1042 reasonable cause and not due to willful neglect, there * * * may
1043 be added to the amount required to be shown as tax on the return a
1044 penalty of five percent (5%) of the total amount of the deficiency
1045 or delinquency of the tax if the failure is for not more than one
1046 (1) month, with an additional five percent (5%) for each
1047 additional month or fraction thereof during which the failure
1048 continues, not to exceed twenty-five percent (25%) in the
1049 aggregate.

1050 (5) In case of failure to pay the amount shown as tax on any
1051 return specified in subsections (1) and (2) of this section on or
1052 before the date prescribed for payment of the tax, determined with
1053 regard to any extension of time for payment, unless it is shown
1054 that the failure is due to reasonable cause and not due to willful
1055 neglect, there * * * may be added to the amount shown as tax on
1056 the return one-half of one percent (1/2 of 1%) of the total amount



1057 of the deficiency or delinquency of the tax if the failure is for
1058 not more than one (1) month, with an additional one-half of one
1059 percent (1/2 of 1%) for each additional month or fraction thereof
1060 during which the failure continues, not to exceed twenty-five
1061 percent (25%) in the aggregate.

1062 **SECTION 10.** Section 27-13-25, Mississippi Code of 1972, is
1063 amended as follows:

1064 27-13-25. (1) If, upon examination of a return made under
1065 the provisions of this chapter, it appears that the correct amount
1066 of tax is greater or less than that shown in the return, the tax
1067 shall be recomputed. Any overpayment of tax so determined shall
1068 be credited or refunded to the taxpayer. If the correct amount of
1069 tax is greater than that shown in the return of the taxpayer, the
1070 commissioner shall make his assessment of additional tax due by
1071 mail or by personal delivery of the assessment to the taxpayer,
1072 which assessment shall constitute notice and demand for payment.
1073 The taxpayer shall be given a period of sixty (60) days from the
1074 date * * * the commissioner mailed or hand delivered the notice in
1075 which to pay the additional tax due, including penalty and
1076 interest as provided in this section, and if the sum is not paid
1077 within the sixty-day period, the commissioner shall proceed to
1078 collect it under the provisions of Sections 27-13-29 through
1079 27-13-41, provided that within the sixty-day period the taxpayer
1080 may appeal to the board of review as provided by law.



1081 (2) In the case of an overpayment of tax, interest shall be
1082 computed under the provisions of Section 27-7-315. In the case of
1083 an underpayment of tax, interest at the rate of one percent (1%)
1084 per month, except as otherwise provided in this subsection, from
1085 the due date of the return * * * may be added or assessed in
1086 addition to the additional tax due as provided in subsection (1)
1087 of this section. For taxes assessed by the commissioner on or
1088 after January 1, 2015, the rate of any interest assessed under
1089 this section shall be:

1090 (a) Nine-tenths of one percent (9/10 of 1%) per month
1091 for such taxes assessed on or after January 1, 2015, and before
1092 January 1, 2016;

1093 (b) Eight-tenths of one percent (8/10 of 1%) per month
1094 for such taxes assessed on or after January 1, 2016, and before
1095 January 1, 2017;

1096 (c) Seven-tenths of one percent (7/10 of 1%) per month
1097 for such taxes assessed on or after January 1, 2017, and before
1098 January 1, 2018;

1099 (d) Six-tenths of one percent (6/10 of 1%) per month
1100 for such taxes assessed on or after January 1, 2018, and before
1101 January 1, 2019; and

1102 (e) One-half of one percent (1/2 of 1%) per month for
1103 such taxes assessed on or after January 1, 2019.

1104 (3) In case of failure to pay any additional taxes as
1105 assessed under this section, unless it is shown that the failure



1106 is due to reasonable cause and not due to willful neglect,
1107 there * * * may be added to the additional amount assessed a
1108 penalty of one-half of one percent (1/2 of 1%) of the amount of
1109 the additional tax if the failure is for not more than one (1)
1110 month, with an additional one-half of one percent (1/2 of 1%) for
1111 each additional month or fraction thereof during which the failure
1112 continues, not to exceed twenty-five percent (25%) in the
1113 aggregate.

1114 **SECTION 11.** Section 27-65-31, Mississippi Code of 1972, is
1115 amended as follows:

1116 27-65-31. Any person liable for a privilege tax levied and
1117 assessed by this chapter except the taxes levied by Sections
1118 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of 1972,
1119 shall add the amount of such tax due by him to the sales price or
1120 gross income and, in addition thereto, shall collect, insofar as
1121 practicable, the amount of the tax due by him from the purchaser
1122 at the time the sales price or gross income is collected. For
1123 purposes of this section, there shall be a presumption that the
1124 taxpayer collected the tax from the customer or purchaser.

1125 The commissioner is authorized, in his discretion, to
1126 prescribe by rule or regulation, brackets or schedules by which
1127 the applicable tax shall be collected from the purchaser.

1128 The commissioner shall have the authority to make changes as
1129 necessary by rule or regulation to implement an agreement for the
1130 collection of sales tax by direct marketers with limited contact



1131 in Mississippi if, in his discretion, it is beneficial to the
1132 state for him to do so.

1133 It shall be unlawful for any person, who is liable for a
1134 privilege tax levied by this chapter except the taxes levied by
1135 Sections 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of
1136 1972, to fail or refuse to add to the sales price and collect,
1137 insofar as practicable, the amount of tax due by him on each sale,
1138 except where the tax was included in the cost of furnishing
1139 service when said cost was a factor in the fixing of rates and
1140 charges.

1141 The tax due under the provisions of this chapter shall be
1142 computed and paid on gross income or gross proceeds of sales of
1143 the business, regardless of the fact that small unit sales may be
1144 within the bracket of one (1) of the schedules which does not
1145 provide for the collection of the tax from the customer.

1146 Nothing in this section with reference to the collection of
1147 the tax from the customer shall be construed to impair, abridge,
1148 alter or affect the obligation of any contract in existence at the
1149 time it becomes effective.

1150 When the tax collected for any filing period is in excess of
1151 the amount due, the total tax collected, including that in excess
1152 of the computed liability, shall be paid to the commissioner.
1153 This provision shall be construed with other provisions of the law
1154 and given effect so as to result in the payment to the



1155 commissioner of the total tax collected if in excess of the amount
1156 due when computed at the applicable rates.

1157 The funds collected by the taxpayer (seller) from the
1158 purchaser pursuant to the provisions of this chapter shall be
1159 considered "trust fund monies" and the taxpayer shall hold these
1160 funds in trust for the State of Mississippi * * *. * * * The
1161 funds * * * shall be separately accounted for as provided by
1162 regulation of the commissioner. If the taxpayer fails to remit
1163 these trust fund monies as required by law, then the taxpayer may
1164 be assessed with a penalty in three (3) times the amount of taxes
1165 due. This penalty is to be assessed and collected in the same
1166 manner as taxes imposed by this chapter and shall be in addition
1167 to all other penalties and/or interest otherwise imposed. * * *
1168 Notwithstanding any other provision of this section, the penalty
1169 imposed in this paragraph shall not be imposed based on any
1170 presumption that the taxpayer collected sales tax from the
1171 purchaser. The penalty provided in this paragraph shall not be
1172 levied unless the commissioner shall prove by preponderance of the
1173 evidence that the taxpayer actually collected these trust fund
1174 monies from the purchaser and knowingly and intentionally failed
1175 to remit them.

1176 Any person violating the provisions of this section shall be
1177 guilty of a misdemeanor and, upon conviction, shall be fined in a
1178 sum not less than Fifty Dollars (\$50.00) nor more than One Hundred
1179 Dollars (\$100.00).



1180 **SECTION 12.** Section 27-65-35, Mississippi Code of 1972, is
1181 amended as follows:

1182 27-65-35. If no return is made on or before the due date by
1183 any taxpayer required to make a return, the commissioner, as soon
1184 as practicable after the due date, shall make an assessment of
1185 taxes and damages from any information available, which shall be
1186 prima facie correct. The commissioner shall give written notice
1187 by mail or by personal delivery to the taxpayer of the tax and
1188 damages thus assessed and demand payment within sixty (60) days
1189 from the date * * * the commissioner mailed or hand delivered the
1190 notice. * * * In the case of an individual, the notice shall be
1191 sent by mail to the taxpayer or delivered by an agent of the
1192 commissioner to the taxpayer, to a manager or general agent at the
1193 taxpayer's place of business or to someone above the age of
1194 sixteen (16) years at the taxpayer's residence. In the case of a
1195 partnership, the notice shall be sent by mail to the partnership
1196 or delivered by an agent of the commissioner to any partner, to a
1197 manager or general agent at the taxpayer's place of business or to
1198 someone above the age of sixteen (16) years at the residence of
1199 any partner. In the case of a corporation, limited liability
1200 company, joint venture, association, estate, trust or other group
1201 or combination acting as a unit, including any government entity,
1202 the notice shall be sent by mail to the taxpayer or delivered by
1203 an agent of the commissioner to an officer of the entity, to
1204 someone above the age of sixteen (16) years at the residence of an



1205 officer of the entity or to a manager or general agent at the
1206 taxpayer's place of business. However, if the taxpayer shall file
1207 a return and pay the tax shown to be due within sixty (60) days
1208 from the date * * * the commissioner mailed or hand delivered the
1209 assessment, the return and payment shall be accepted in lieu of
1210 the assessment.

1211 **SECTION 13.** Section 27-65-37, Mississippi Code of 1972, is
1212 amended as follows:

1213 27-65-37. (1) If adequate records of the gross income or
1214 gross proceeds of sales are not maintained or invoices preserved
1215 as provided herein, or if an audit of the records of a taxpayer,
1216 or any return filed by him, or any other information discloses
1217 that taxes are due and unpaid, the commissioner shall make
1218 assessments of taxes, damages, and interest from any information
1219 available, which shall be prima facie correct. However, if in an
1220 audit of the records of a taxpayer it is determined that during
1221 the period being audited the taxpayer reported and paid tax in
1222 accordance with a method used during a prior period which had been
1223 audited by the commissioner and not found to result in any
1224 additional tax due, the commissioner shall be estopped from
1225 collecting any additional tax as a result of the use of this
1226 previously audited method for any period prior to notification by
1227 the commissioner or his agent during the current audit that use of
1228 the previously audited method would result in additional tax being



1229 due if it is determined, through all information available
1230 regarding this taxpayer, that:

1231 (a) The method in issue was previously audited by the
1232 commissioner with no additional tax determined to be due under
1233 such method;

1234 (b) The method under consideration in the current audit
1235 is the same method that was used in the prior audit;

1236 (c) There has not been a statutory or regulatory change
1237 that would have resulted in additional tax being due under this
1238 method after the statutory or regulatory change; and

1239 (d) The taxpayer detrimentally relied on the fact that
1240 this method had been previously audited and not found to result in
1241 additional tax.

1242 (2) * * * The commissioner shall give notice to the taxpayer
1243 of the assessments and demand payment of the tax, damages and
1244 interest within sixty (60) days from the date the commissioner
1245 mailed or hand delivered the notice. The notice shall be sent by
1246 regular first class mail or delivered by an agent of the
1247 commissioner. In the case of an individual, the notice shall be
1248 sent by mail to the taxpayer or delivered by an agent of the
1249 commissioner to the taxpayer, to a manager or general agent at the
1250 taxpayer's place of business or to someone above the age of
1251 sixteen (16) years at the taxpayer's residence. In the case of a
1252 partnership, the notice shall be sent by mail to the partnership
1253 or delivered by an agent of the commissioner to any partner, to a



1254 manager or general agent at the taxpayer's place of business or to
1255 someone above the age of sixteen (16) years at the residence of
1256 any partner. In the case of a corporation, limited liability
1257 company, joint venture, association, estate, trust or other group
1258 or combination acting as a unit, including any government entity,
1259 the notice shall be sent by mail to the taxpayer or delivered by
1260 an agent of the commissioner to an officer of the entity, to
1261 someone above the age of sixteen (16) years at the residence of an
1262 officer of the entity or to a manager or general agent at the
1263 taxpayer's place of business.

1264 (3) If the taxpayer shall fail or refuse to comply with the
1265 notice of assessment or shall fail to petition for a hearing, the
1266 commissioner shall proceed as provided in Section 27-65-39.

1267 **SECTION 14.** Section 27-65-39, Mississippi Code of 1972, is
1268 amended as follows:

1269 27-65-39. If any part of the deficient or delinquent tax is
1270 due to negligence or failure to comply with the provisions of this
1271 chapter or authorized rules and regulations promulgated under the
1272 provisions of this chapter without intent to defraud, there may be
1273 added as damages ten percent (10%) of the total amount of
1274 deficiency or delinquency in the tax, or interest at the rate of
1275 one percent (1%) per month, except as otherwise provided in this
1276 section, or both, from the date such tax was due until paid, and
1277 the tax, damages and interest shall become payable upon notice and
1278 demand by the commissioner.



1279 If any part of the deficient or delinquent tax is due to
1280 intentional disregard of the provisions of this chapter or
1281 authorized rules and regulations promulgated under the provisions
1282 of this chapter, or is due to fraud with intent to evade the law,
1283 then there * * * may be added as damages fifty percent (50%) of
1284 the total amount of the deficiency or delinquency of the tax, and
1285 in such case the whole amount of tax unpaid, including the charges
1286 so added, shall become due and payable upon notice and demand by
1287 the commissioner, and interest of one percent (1%) per month,
1288 except as otherwise provided in this section, of the total amount
1289 of the deficiency or delinquency of the tax * * * may be added
1290 from the date such tax was due until paid. Provided, however, no
1291 such damages shall be added if the taxpayer establishes reasonable
1292 cause for his negligence or failure to comply. A taxpayer's
1293 purported disregard of instructions given through an audit shall
1294 not be a basis for the imposition of the penalty provided in this
1295 paragraph.

1296 For taxes assessed by the commissioner on or after January 1,
1297 2015, the rate of any interest assessed under this section shall
1298 be:

1299 (a) Nine-tenths of one percent (9/10 of 1%) per month
1300 for such taxes assessed on or after January 1, 2015, and before
1301 January 1, 2016;



1302 (b) Eight-tenths of one percent (8/10 of 1%) per month
1303 for such taxes assessed on or after January 1, 2016, and before
1304 January 1, 2017;

1305 (c) Seven-tenths of one percent (7/10 of 1%) per month
1306 for such taxes assessed on or after January 1, 2017, and before
1307 January 1, 2018;

1308 (d) Six-tenths of one percent (6/10 of 1%) per month
1309 for such taxes assessed on or after January 1, 2018, and before
1310 January 1, 2019; and

1311 (e) One-half of one percent (1/2 of 1%) per month for
1312 such taxes assessed on or after January 1, 2019.

1313 **SECTION 15.** Section 27-77-1, Mississippi Code of 1972, is
1314 amended as follows:

1315 27-77-1. As used in this chapter:

1316 (a) "Agency" means the commissioner acting directly or
1317 through his duly authorized officers, agents, representatives and
1318 employees, to perform duties and powers prescribed by the laws of
1319 this state to be performed by the Commissioner of Revenue or the
1320 Department of Revenue.

1321 (b) "Board of review" means the board of review of the
1322 Department of Revenue as appointed by the commissioner under
1323 Section 27-77-3, and also means a panel of the board of review
1324 when an appeal is considered by a panel of the board of review
1325 instead of the board of review en banc.



1326 (c) "Board of Tax Appeals" means the Board of Tax
1327 Appeals as created under Section 27-4-1.

1328 (d) "Chairman" means the Chairman of the Board of Tax
1329 Appeals.

1330 (e) "Commissioner" means the Commissioner of the
1331 Department of Revenue.

1332 (f) "Denial" means the final decision of the staff of
1333 the agency to deny the claim, request for waiver or application
1334 being considered. In this context, staff of the agency does not
1335 include the board of review or the Board of Tax Appeals. "Denial"
1336 does not mean the act of returning or refusing to consider a
1337 claim, request for waiver or application for permit, IFTA license,
1338 IRP registration, title or tag by the staff of the agency due to a
1339 lack of information and/or documentation unless the return or
1340 refusal is in response to a representation by the person who filed
1341 the claim, request for waiver or application in issue that
1342 information and/or documentation indicated by the staff of the
1343 agency to be lacking cannot or will not be provided.

1344 (g) "Designated representative" means an individual who
1345 represents a person in an administrative appeal before a hearing
1346 officer of the agency, before the board of review or before the
1347 Board of Tax Appeals.

1348 (h) "Executive director" means the Executive Director
1349 of the Board of Tax Appeals.



1350 (i) "IFTA license" means a permit, license or decal
1351 which the agency is authorized to issue or revoke under the
1352 Interstate Commercial Carriers Motor Fuel Tax Law (Section 27-61-1
1353 et seq.) or the International Fuel Tax Agreement.

1354 (j) "IFTA licensee" means a person holding the IFTA
1355 license, applying for an IFTA license or renewing an IFTA license.

1356 (k) "IRP registration" means the registration of a
1357 vehicle under the provisions of the International Registration
1358 Plan.

1359 (l) "IRP registrant" means a person in whose name a
1360 vehicle or vehicles are registered under the provisions of the
1361 International Registration Plan.

1362 (m) "IRP credentials" means the cab card and license
1363 plate issued by the commissioner or agency in accordance with the
1364 International Registration Plan.

1365 (n) "Last known address" when referring to the mailing
1366 of a notice of intent to suspend, revoke or to order the surrender
1367 and/or seizure of the permit, IFTA license, IRP registration, IRP
1368 credentials, tag or title or to the mailing of a denial of the
1369 permit, IFTA license, IRP registration, tag or title, means the
1370 last mailing address of the person being sent the notice as it
1371 appears on the record of the agency in regard to the permit, IFTA
1372 license, IRP registration, tag or title in issue. All other
1373 references to "last known address" in this chapter mean the
1374 official mailing address that the hearing officer, the board of



1375 review or the executive director has for the addressee in their
1376 file on the administrative appeal in which the document or item is
1377 being mailed to the addressee. The addressee is presumed to have
1378 received any document or item mailed to his official mailing
1379 address. The commissioner, by regulation, shall prescribe the
1380 procedure for establishing an official mailing address in the
1381 administrative appeal process for appeals before an administrative
1382 hearing officer or the Board of Review of the Department of
1383 Revenue and the procedure for changing that official mailing
1384 address. The Board of Tax Appeals, by regulation, shall prescribe
1385 the procedure for establishing an official mailing address in the
1386 administrative appeal process before that board and the procedure
1387 for changing that official mailing address. It is the
1388 responsibility of the addressee to make sure that his official
1389 mailing address is correct.

1390 (o) "Mail," "mailed" or "mailing" means placing the
1391 document or item referred to in * * * United States mail, postage
1392 prepaid, via mail, addressed to the person to whom the document or
1393 item is to be sent at the last known address of that person.
1394 Where a person is represented in an administrative appeal before a
1395 hearing officer, the board of review or the Board of Tax Appeals
1396 by a designated representative, the terms "mail," "mailed" or
1397 "mailing" when referring to sending a document or item to that
1398 person shall also mean placing the document or item referred to
1399 in * * * United States mail, via mail, postage prepaid, to the



1400 last known address of that person's designated representative.
1401 Mailing to the designated representative of a taxpayer, permittee,
1402 IFTA licensee, IRP registrant, tag holder or title interest holder
1403 shall constitute mailing and notice to the taxpayer, permittee,
1404 IFTA licensee, IRP registrant, tag holder or title interest
1405 holder.

1406 (p) "Permit" means a type of license or permit that the
1407 agency is authorized to issue, suspend or revoke, such as a sales
1408 tax permit, a beer permit, a tobacco permit, a dealer license, or
1409 designated agent status, but does not include:

1410 (i) Any type of permit issued under the Local
1411 Option Alcoholic Beverage Control Law, Section 67-1-1 et seq. or
1412 under the Mississippi Native Wine Law of 1976, Section 67-5-1 et
1413 seq.;

1414 (ii) An IFTA license; or

1415 (iii) An IRP registration, including the IRP
1416 credential issued as a result of IRP registration.

1417 (q) "Permittee" means a person holding a permit,
1418 applying for a permit or renewing a permit.

1419 (r) "Person" means a natural person, partnership,
1420 limited partnership, corporation, limited liability company,
1421 estate, trust, association, joint venture, other legal entity or
1422 other group or combination acting as a unit, and includes the
1423 plural as well as the singular in number. "Person" includes the
1424 state, county, municipal, other political subdivision and any



1425 agency, institution or instrumentality thereof, but only when used
1426 in the context of a taxpayer, permittee, IFTA licensee, IRP
1427 registrant, tag holder or title interest holder.

1428 (s) "Refund claim" means a claim made in writing by a
1429 taxpayer and received by the agency wherein the taxpayer indicates
1430 that he overpaid taxes to the agency and requests a refund of the
1431 overpayment and/or a credit against current or future taxes for
1432 the overpayment.

1433 (t) "Resident," when used to describe a taxpayer or
1434 petitioner, means a natural person whose residence and place of
1435 abode is within the State of Mississippi.

1436 (u) "Tag" means a type of license tag, plate or
1437 registration card for a motor vehicle or trailer that the agency
1438 is authorized under the Mississippi Motor Vehicle Privilege Tax
1439 Law, Section 27-19-1 et seq., or under the Motor Vehicle Dealer
1440 Tag Permit Law, Section 27-19-301 et seq., to issue or approve
1441 before issuance, but does not include other types of license tags
1442 or plates issued by the county tax collectors except for
1443 personalized license tags and only to the extent that the agency
1444 determines under Section 27-19-48 that a personalized license tag
1445 applied for is considered obscene, slandering, insulting or vulgar
1446 in ordinary usage or demands the surrender or orders the seizure
1447 of the tag where issued in error.

1448 (v) "Tag holder" means the person in whose name a tag
1449 is registered or the person applying for a tag.



1450 (w) "Tag penalty" means the penalties imposed under
1451 Sections 27-19-63 and 27-51-43 for any delinquency in the payment
1452 of motor vehicle privilege tax and ad valorem tax on a motor
1453 vehicle which can be waived by the agency for good reason shown.
1454 Pursuant to Section 27-51-103, imposition of this ad valorem tag
1455 penalty at the maximum rate of twenty-five percent (25%) also
1456 results in ineligibility for the credit against motor vehicle ad
1457 valorem taxes provided by that statute. Waiver of the twenty-five
1458 percent (25%) delinquency penalty by the agency under Section
1459 27-51-43 shall reinstate credit eligibility.

1460 (x) "Tax" means a tax, fee, penalty and/or interest
1461 which the agency is required by either general law or by local and
1462 private law to administer, assess and collect.

1463 (y) "Taxpayer" means a person who is liable for or paid
1464 any tax to the agency.

1465 (z) "Title" means a title to a motor vehicle or
1466 manufactured housing issued by the agency under the Mississippi
1467 Motor Vehicle Title Law, Section 63-21-1 et seq.

1468 (aa) "Title interest holder" shall mean the owner or
1469 lienholder in a motor vehicle or manufactured housing as indicated
1470 on a title issued by the agency or as indicated on an application
1471 to the agency for the issuance of a title.

1472 **SECTION 16.** Section 27-77-5, Mississippi Code of 1972, is
1473 amended as follows:



1474 27-77-5. (1) Any taxpayer aggrieved by an assessment of tax
1475 by the agency, by the agency's denial of a refund claim, * * * by
1476 the denial of a waiver of tag penalty, or the denial of a claim to
1477 tax credits or incentives, and who wishes to contest the action of
1478 the agency shall, within sixty (60) days from the date the agency
1479 mailed or delivered written notice of the action, file an appeal
1480 in writing with the board of review requesting a hearing and
1481 correction of the contested action specifying in detail the relief
1482 requested and any other information that might be required by
1483 regulation. Even after an appeal is filed with the board of
1484 review, the agency retains the authority to change the assessment,
1485 the denial of refund claim or the denial of tag penalty being
1486 appealed.

1487 (2) Upon receipt of a timely written appeal from a tax
1488 assessment, refund claim denial * * *, denial of waiver of a tag
1489 penalty, or the denial of a claim to tax credits or incentives, a
1490 hearing shall be scheduled before the board of review unless it is
1491 determined that the relief requested in the written appeal should
1492 be granted without a hearing. A notice of the hearing shall be
1493 mailed to the taxpayer advising the taxpayer of the date, time and
1494 location of the hearing. The taxpayer or his designated
1495 representative shall attend the hearing unless a request is made
1496 to, and granted by, the board of review to allow the taxpayer to
1497 submit his position in writing or by electronic transmission in
1498 lieu of attendance. Failure of the taxpayer or his designated



1499 representative to attend a hearing or to submit his position in
1500 writing or by electronic transmission by the date specified by the
1501 board of review or by the hearing date, if no date was specified,
1502 shall constitute a withdrawal of the appeal.

1503 (3) At a hearing before the board of review on a tax
1504 assessment, denial of refund claim * * *, denial of waiver of a
1505 tag penalty, or the denial of a claim to tax credits or
1506 incentives, the board of review shall try the issues presented,
1507 according to law and the facts and within the guidelines
1508 established by regulation. The hearing before the board of review
1509 shall be informal and no official transcript will be made of the
1510 hearing. At the earliest practical date after the hearing, the
1511 members of the board of review that heard the appeal shall make a
1512 determination on the matter presented and notify the taxpayer of
1513 its findings by mailing a copy of its order to the taxpayer. If
1514 the order involves the appeal of a denial of a waiver of tag
1515 penalty, a copy of the order shall also be mailed to the tax
1516 collector that imposed the penalty. If in the order the board of
1517 review orders the taxpayer to pay a tax assessment, the taxpayer
1518 shall, within sixty (60) days from the date the board of review
1519 mailed * * * the order, pay the amount ordered to be paid or
1520 appeal the order of the board of review to the Board of Tax
1521 Appeals. After the sixty-day period, if an appeal is not filed by
1522 the taxpayer with the Executive Director of the Board of Tax
1523 Appeals and the tax determined by the board of review is not paid,



1524 the agency shall proceed to collect the tax assessment as
1525 determined by the board of review.

1526 (4) Any taxpayer aggrieved by an order of the board of
1527 review affirming a tax assessment, the denial of a refund
1528 claim * * *, the denial of a waiver of tag penalty, or the denial
1529 of a claim to tax credits or incentives, and who wishes to contest
1530 the order shall, within sixty (60) days from the date the board of
1531 review mailed * * * the order * * * being contested, file an
1532 appeal to the Board of Tax Appeals. The appeal shall be in
1533 writing and shall request a hearing and reversal or modification
1534 of the order of the board of review, specify in detail the relief
1535 requested and contain any other information that might be required
1536 by regulation, and be filed with the executive director. At the
1537 time of filing his appeal with the executive director, the
1538 taxpayer shall also file a copy of his written appeal with the
1539 board of review. Even after an appeal is filed with the Executive
1540 Director of the Board of Tax Appeals, the board of review retains
1541 the authority to amend and/or correct the order being appealed at
1542 any time prior to a decision by the Board of Tax Appeals on the
1543 appeal. Failure to timely file a written appeal with the
1544 executive director within the sixty-day period shall make the
1545 order of the board of review final and not subject to further
1546 review by the Board of Tax Appeals or a court, other than as to
1547 the issue of whether a written appeal from the order of the board
1548 of review was timely filed with the executive director. If the



1549 board of review shall not issue an order within six (6) months of
1550 a hearing, the taxpayer may treat the failure to issue an order as
1551 a denial of the relief requested in the hearing and appeal such
1552 deemed denial to the Board of Tax Appeals as provided in this
1553 section. A taxpayer's filing or failure to file an appeal based
1554 on this deemed denial shall not prejudice or otherwise jeopardize
1555 the taxpayer's right to file an appeal with the Board of Tax
1556 Appeals upon the board of review's issuance of a subsequent order
1557 in the manner provided for in this section.

1558 (5) Upon receipt of a written appeal from an order of the
1559 board of review affirming a tax assessment, refund claim
1560 denial * * *, denial of waiver of a tag penalty, or the denial of
1561 a claim to tax credits or incentives, the executive director shall
1562 schedule a hearing before the Board of Tax Appeals on the appeal.
1563 A notice of this hearing shall be mailed to the taxpayer and the
1564 agency advising them of the date, time and location of hearing.
1565 The taxpayer or his designated representative shall attend the
1566 hearing unless a request is made to and granted by the Executive
1567 Director of the Board of Tax Appeals to allow the taxpayer to
1568 submit his position in writing or by electronic transmission in
1569 lieu of attendance. Failure of the taxpayer or his designated
1570 representative to attend a hearing or to submit his position in
1571 writing or by electronic transmission by the date specified by the
1572 executive director or by the hearing date, if no date was
1573 specified, shall constitute a withdrawal of the appeal.



1574 (6) (a) At any hearing before the Board of Tax Appeals on
1575 an appeal of an order of the board of review affirming a tax
1576 assessment, refund claim denial * * *, denial of waiver of a tag
1577 penalty, or the denial of a claim to tax credits or incentives,
1578 two (2) members of the Board of Tax Appeals shall constitute a
1579 quorum. At the hearing, the Board of Tax Appeals shall * * *
1580 conduct a hearing on all factual and legal issues raised by the
1581 taxpayer which address the substantive or procedural propriety of
1582 the actions of the Department of Revenue being appealed, according
1583 to the law and the facts and pursuant to any procedural guidelines
1584 established by regulation.

1585 (b) At a hearing of any action brought under this
1586 section, the Board of Tax Appeals shall give no deference to the
1587 decision of the Board of Review, but shall give deference to the
1588 department's interpretation and application of the statutes as
1589 reflected in duly enacted regulations and other officially adopted
1590 publications. The Board of Tax Appeals shall conduct a hearing on
1591 all factual and legal issues raised by the taxpayer which address
1592 the substantive or procedural propriety of the actions being
1593 appealed. The Board of Tax Appeals shall decide all factual and
1594 legal questions presented, including those as to legality and the
1595 amount of tax or refund due as well as whether and to what extent
1596 the imposition of interest and/or penalties is warranted under the
1597 facts of the case, and if it finds that the tax assessment, denial
1598 of refund claim or other action of the agency in issue is



1599 incorrect or invalid, in whole or in part, it shall determine the
1600 amount of tax or refund due, including interest and, if
1601 applicable, penalty to date, and enter such order or judgment as
1602 it deems proper. Interest and penalty included in this
1603 determination shall be computed by the Board of Tax Appeals based
1604 on the methods for computing penalty and interest as specified by
1605 law for the type of tax in issue, and the Board of Tax Appeals
1606 shall have the same discretion as the commissioner in determining
1607 whether and to what extent such amounts are warranted under the
1608 facts of the case. The rules of evidence shall be relaxed at the
1609 hearing.

1610 (c) Any appeal to chancery court from an order of the
1611 Board of Tax Appeals resulting from this type of hearing shall
1612 include a full evidentiary judicial hearing on * * * all factual
1613 and legal issues raised by the taxpayer which address the
1614 substantive or procedural propriety of the department's action
1615 being appealed. No official transcript shall be made of this
1616 hearing before the Board of Tax Appeals.

1617 (d) After reaching a decision on the issues presented,
1618 the Board of Tax Appeals shall enter its order setting forth its
1619 findings and decision on the appeal. A copy of the order of the
1620 Board of Tax Appeals shall be mailed to the taxpayer and the
1621 agency. If the order involves an appeal of a denial of a waiver
1622 of tag penalty, a copy of the order shall also be mailed to the
1623 tax collector that imposed the penalty.



1624 (e) If the Board of Tax Appeals shall not issue an
1625 order within nine (9) months of a hearing, the taxpayer may treat
1626 the failure to issue an order as a denial of the relief requested
1627 in the hearing and appeal such deemed denial to the chancery court
1628 as provided in Section 27-77-7. A taxpayer's filing or failure to
1629 file an appeal based on this deemed denial shall not prejudice or
1630 otherwise jeopardize the taxpayer's right to file an appeal with
1631 the chancery court upon the Board of Tax Appeals' issuance of a
1632 subsequent order in the manner provided for in Section 27-77-7.

1633 (7) If in its order the Board of Tax Appeals orders a
1634 taxpayer to pay a tax assessment, the taxpayer shall, within sixty
1635 (60) days from the date the Board of Tax Appeals mailed * * * the
1636 order, pay the amount ordered to be paid or properly appeal the
1637 order of the Board of Tax Appeals to chancery court as provided in
1638 Section 27-77-7. After the sixty-day period, if the tax
1639 determined by the Board of Tax Appeals to be due is not paid and
1640 an appeal from the Board of Tax Appeals order has not been
1641 properly filed, the agency shall proceed to collect the tax
1642 assessment as affirmed by the Board of Tax Appeals. If in its
1643 order the Board of Tax Appeals determines that the taxpayer has
1644 overpaid his taxes and an appeal from the Board of Tax Appeals
1645 order has not been properly filed in chancery court, the agency
1646 shall, within sixty (60) days from the date the Board of Tax
1647 Appeals mailed its order, refund or credit to the taxpayer, as



1648 provided by law, the amount of overpayment as determined and set
1649 out in the order.

1650 (8) At any time after the filing of an appeal to the board
1651 of review or from the board of review to the Board of Tax Appeals
1652 under this section, an appeal can be withdrawn. Such a withdrawal
1653 of an appeal may be made voluntarily by the taxpayer or may occur
1654 involuntarily as a result of the taxpayer failing to appear at a
1655 scheduled hearing, failing to make a written submission or
1656 electronic transmission in lieu of attendance at a hearing by the
1657 date specified or by the hearing date, if no date was specified,
1658 or by any other act or failure that the board of review or the
1659 Board of Tax Appeals determines represents a failure on the part
1660 of the taxpayer to prosecute his appeal. Any voluntary withdrawal
1661 shall be in writing or by electronic transmission and sent by the
1662 taxpayer or his designated representative to the chairman of the
1663 board of review, if the appeal being withdrawn is to the board of
1664 review, or to the executive director, if the appeal being
1665 withdrawn is to the Board of Tax Appeals. If the withdrawal of
1666 appeal is involuntary, the administrative appeal body from whom
1667 the appeal is being withdrawn shall note on its minutes the
1668 involuntary withdrawal of the appeal and the basis for the
1669 withdrawal. Once an appeal is withdrawn, whether voluntary or
1670 involuntary, the action from which the appeal was taken, whether a
1671 tax assessment, a denial of refund claim, a denial of waiver of
1672 tax penalty, or the denial of a claim to tax credits or



1673 incentives, or an order of the board of review, shall become final
1674 and not subject to further review by the board of review, the
1675 Board of Tax Appeals or a court, other than as to the issue of
1676 whether a taxpayer's actions or inactions constituted a failure on
1677 the part of the taxpayer to prosecute his appeal. The agency
1678 shall then proceed in accordance with law based on such final
1679 action.

1680 (9) Nothing in this section shall bar a taxpayer from timely
1681 applying to the commissioner as otherwise provided by law for a
1682 tax refund or for a revision in tax.

1683 (10) Any appeal or other filing with the board of review or
1684 Board of Tax Appeals pursuant to this section shall be considered
1685 timely if it is hand delivered during the regular office hours of
1686 the recipient by the due date of such filing, or if it is mailed,
1687 postmarked or shipped by such due date. Any appeal or other
1688 filing to the board of review or Board of Tax Appeals pursuant to
1689 this section shall also be considered timely if electronically
1690 transmitted via electronic mail, electronic filing or facsimile by
1691 midnight of the due date for such filing. The timeliness of such
1692 electronic filing shall be determined in all instances based on
1693 the local time zone of the recipient. If the due date for any
1694 appeal or other filing with the board of review or Board of Tax
1695 Appeals should fall on a Saturday, Sunday, official state holiday,
1696 or other day on which the Department of Revenue or Board of Tax
1697 Appeals is closed, the due date for the filing shall be the next



1698 business day in which the Department of Revenue or Board of Tax
1699 Appeals is open.

1700 **SECTION 17.** Section 27-77-7, Mississippi Code of 1972, is
1701 amended as follows:

1702 27-77-7. (1) The findings and order of the Board of Tax
1703 Appeals entered under Section 27-77-5 shall be final unless the
1704 agency or the taxpayer shall, within sixty (60) days from the date
1705 the Board of Tax Appeals mailed * * * the order, file a petition
1706 in the chancery court appealing the order. If the petition under
1707 this subsection is filed by the taxpayer, the petition shall be
1708 filed against the Department of Revenue as respondent. If the
1709 petition under this subsection is filed by the agency, the
1710 petition shall be filed against the taxpayer as respondent. The
1711 petition shall contain a concise statement of the facts as
1712 contended by the petitioner, identify the order from which the
1713 appeal is being taken and set out the type of relief sought. If
1714 in the action, the taxpayer is seeking a refund or credit for an
1715 alleged overpayment of any tax * * * other than individual or
1716 corporate income tax or franchise tax, the taxpayer shall allege
1717 in the petition or in his answer, where the appeal is filed by the
1718 agency, that he alone bore the burden of the tax sought to be
1719 refunded or credited and did not directly or indirectly collect
1720 the tax from anyone else; however, this requirement shall not
1721 apply in any case involving a claim for incentives based on
1722 payroll withholding or other incentives, rebates or other economic



1723 benefits the computation of which is based, in whole or in part,
1724 upon taxes withheld or paid. The respondent to the petition has
1725 thirty (30) days from the date of service of the petition to file
1726 a cross-appeal.

1727 (2) A petition under subsection (1) of this section shall be
1728 filed in the chancery court of the county or judicial district in
1729 which the taxpayer has a place of business or in the Chancery
1730 Court of the First Judicial District of Hinds County, Mississippi;
1731 however, a resident taxpayer may file the petition in the chancery
1732 court of the county or judicial district in which he is a
1733 resident. If both the agency and the taxpayer file a petition
1734 under subsection (1) of this section, the appeals shall be
1735 consolidated and the chancery court where the taxpayer filed his
1736 petition shall have jurisdiction over the consolidated appeal.

1737 (3) * * * Unless otherwise ordered by the chancery court
1738 upon motion by the agency, no taxpayer appealing an order of the
1739 Board of Tax Appeals under this section shall be required to post
1740 security or a bond, or otherwise pay to the agency, under protest
1741 or otherwise, any contested taxes, interest, penalties or other
1742 amounts. After a petition or cross-appeal is filed by a taxpayer
1743 under this section, if the agency believes that its ability to
1744 obtain payment from the taxpayer of the taxes, penalties and
1745 interest in issue is jeopardized by its inability to proceed with
1746 collection due to the filing of the appeal or cross-appeal by the
1747 taxpayer or if the agency believes that the appeal or cross-appeal



1748 is being brought to delay payment of the taxes, penalties or
1749 interest in issue, the agency may move the chancery court to
1750 require the taxpayer to post a bond or other adequate security for
1751 the payment of any judgment of the court. Upon consideration of
1752 such motion, after notice and hearing, the chancellor shall
1753 determine whether a bond or other security is needed to protect
1754 the interest of the state in regard to the timely payment of the
1755 taxes, penalties and interest in issue. If the chancellor
1756 determines that a bond or other security is necessary to protect
1757 the interest of the state, the chancellor shall provide the
1758 taxpayer sixty (60) days from the date that he enters an order on
1759 the motion to post with the clerk of the court the bond or other
1760 security that the chancellor determines is needed to protect the
1761 state's interest. To avoid the accruing of additional penalty and
1762 interest while an appeal is pending, a taxpayer appealing an order
1763 of the Board of Tax Appeals affirming a tax assessment may, prior
1764 to the filing of the petition, pay to the agency, under protest,
1765 the amount ordered by the Board of Tax Appeals to be paid and seek
1766 a refund of such taxes, plus interest thereon, in the appeal. The
1767 taxpayer shall pay to the agency any tax included in the
1768 assessment which he is not contesting. If the petition initiating
1769 the appeal is filed by the taxpayer, the payment of the
1770 uncontested tax shall be made prior to the expiration of the
1771 sixty-day time period for filing a petition under subsection (1)
1772 of this section or the commissioner may institute collection



1773 proceedings for such uncontested amount. If the petition
1774 initiating the appeal is filed by the agency, the payment of the
1775 uncontested tax shall be made prior to the expiration of the
1776 sixty-day time period for the filing of the petition. Failure of
1777 the taxpayer to timely pay the uncontested tax shall not bar the
1778 taxpayer from obtaining a reduction, abatement and/or refund of
1779 any contested tax in the appeal and shall not result in the
1780 taxpayer's appeal or cross-appeal being dismissed * * * or delayed
1781 or judgment being entered granting the agency the relief it
1782 requested.

1783 (4) In an action under this section resulting from an order
1784 of the Board of Tax Appeals involving a refund claim denial, the
1785 agency shall refund or credit to the taxpayer, as provided by law,
1786 the amount of any overpayment included in the refund claim which
1787 the agency does not contest. If the petition initiating the
1788 appeal is filed by the agency, the uncontested overpayment shall
1789 be paid or credited to the taxpayer prior to the expiration of the
1790 sixty-day time period for filing a petition under subsection (1)
1791 of this section. If the petition initiating the appeal is filed
1792 by the taxpayer, such uncontested overpayment shall be paid or
1793 credited to the taxpayer prior to the expiration of the thirty-day
1794 time period for the filing of an answer or other response to the
1795 petition as provided in subsection (5) of this section. Failure
1796 of the agency to timely pay or credit the uncontested overpayment
1797 to the taxpayer shall bar the agency from obtaining an



1798 affirmation, in whole or in part, of the refund claim denial in
1799 issue * * * until the payment or claim is made, but shall not
1800 result in the agency's appeal or cross-appeal being
1801 dismissed * * * or judgment being entered granting the taxpayer
1802 the relief he requested * * *.

1803 (5) Upon the filing of the petition under subsection (1) of
1804 this section, the clerk of the court shall issue a summons to the
1805 respondent requiring the respondent to answer or otherwise respond
1806 to the petition within thirty (30) days of service. Where the
1807 agency is the respondent, the summons shall be served on the
1808 agency by personal service on the commissioner as the chief
1809 executive officer of the agency. The chancery court in which a
1810 petition under subsection (1) of this section is properly filed
1811 shall have jurisdiction to hear and determine the cause or issues
1812 joined as in other cases. In any petition, cross-appeal or answer
1813 in which the taxpayer is seeking a refund or credit for an alleged
1814 overpayment of any tax * * * other than individual or corporate
1815 income tax or franchise the taxpayer shall prove by a
1816 preponderance of the evidence that he alone bore the burden of the
1817 tax sought to be refunded or credited and did not directly or
1818 indirectly collect the tax from anyone else; however, this
1819 requirement shall not apply in any case involving a claim for
1820 incentives based on withholding taxes or other incentives, rebates
1821 or other economic benefits the computation of which is based, in
1822 whole or in part, upon taxes withheld or paid. At trial of any



1823 action brought under this section, the chancery court shall give
1824 no deference to the decision * * * of the Board of Tax Appeals,
1825 the Board of Review or the Department of Revenue, but shall give
1826 deference to the department's interpretation and application of
1827 the statutes as reflected in duly enacted regulations and other
1828 officially adopted publications. The chancery court shall try the
1829 case de novo and conduct a full evidentiary judicial hearing
1830 on * * * all factual and legal issues raised by the taxpayer which
1831 address the substantive or procedural propriety of the actions of
1832 the Department of Revenue being appealed. The chancery court is
1833 expressly prohibited from trying any action filed pursuant to this
1834 section using the more limited standard of review specified for
1835 appeals in Section 27-77-13 of this chapter. Based on the
1836 evidence presented at trial, the chancery court shall determine
1837 whether the party bringing the appeal has proven by a
1838 preponderance of the evidence or a higher standard if required by
1839 the issues raised, that he is entitled to any or all of the relief
1840 he has requested. The chancery court shall decide all factual and
1841 legal questions presented, including those as to legality and the
1842 amount of tax, * * * refund, tax credit or tax incentive due as
1843 well as whether and to what extent the imposition of interest
1844 and/or penalties are warranted under the facts of the case, and if
1845 it finds that the tax assessment * * *, denial of * * * the claim
1846 for a tax refund, tax credit or tax incentive or other action of
1847 the agency in issue is incorrect or invalid, in whole or in part,



1848 it shall determine the amount of tax or refund due, including
1849 interest and, if applicable, penalty to date, and enter such order
1850 or judgment as it deems proper. Interest and penalty included in
1851 this determination shall be computed by the court based on the
1852 methods for computing penalty and interest as specified by law for
1853 the type of tax in issue, and the court shall have the same
1854 discretion as the commissioner in determining whether and to what
1855 extent such amounts are warranted under the facts of the case.

1856 When the chancery court determines that an overpayment exists, the
1857 determination as to whether such overpayment shall be refunded to
1858 the taxpayer or credited against the taxpayer's future taxes shall
1859 be made by the chancery court based on the method for handling
1860 overpayments as specified by the law for the type of tax in issue.
1861 Either the agency or the taxpayer, or both, shall have the right
1862 to appeal from the order of the chancery court to the Supreme
1863 Court as in other cases. If an appeal is taken from the order of
1864 the chancery court, any bond or other security required to be
1865 posted by order of the chancery court shall continue to remain in
1866 place until a final decision is rendered in the case.

1867 **SECTION 18.** Except for the reductions in the rate of
1868 interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which
1869 also contain the effective date of such rate of interest changes,
1870 nothing in Sections 1 through 14 of this act shall affect or
1871 defeat any refund claim, assessment, appeal, suit, right or cause
1872 of action for taxes due or accrued under the laws of this state



1873 before the date on which this act becomes effective, whether such
1874 refund claims, assessments, appeals, suits or actions have been
1875 begun or filed before the date on which this act becomes effective
1876 or are begun or filed thereafter; and the statutes contained in
1877 these sections as in effect prior to the effective date of this
1878 act are expressly continued in full force, effect and operation
1879 for the purpose of any refund claim, assessment, appeal, suit,
1880 right or cause of action for taxes paid, due or accrued under the
1881 laws of this state before the date on which this act goes into
1882 effect, for the collection and enrollment of liens for any taxes
1883 due or accrued before the date on which this act goes into effect
1884 and for the execution of any warrant under such laws before the
1885 date on which this act becomes effective, and for the imposition
1886 of any penalties, forfeitures or claims for failure to comply with
1887 such laws prior to the date on which this act becomes effective.

1888 **SECTION 19.** Nothing in Sections 15, 16 or 17 of this act
1889 shall affect or defeat any assessment, refund claim, request for
1890 waiver of a tax penalty or claim for tax credits or incentives or
1891 the administrative appeal or judicial appeal thereof where the
1892 initial date of said assessment, refund claim, tag penalty, claim
1893 for tax credits or incentives is before the date on which this act
1894 becomes effective. The provisions of the laws relating to the
1895 administrative appeal or judicial review of such actions which
1896 were in effect prior to the effective date of this act are
1897 expressly continued in full force, effect and operation for the



1898 purpose of providing an administrative appeal and/or judicial
1899 review of any assessment, refund claim, request for waiver of a
1900 tag penalty or claim for tax credits or incentives where the
1901 initial date of said assessment, refund claim, tag penalty, claim
1902 for tax credits or incentives is before the date on which this act
1903 becomes effective.

1904 **SECTION 20.** This act shall take effect and be in force from
1905 and after January 1, 2015.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 PREPONDERANCE OF THE 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 PREPONDERANCE OF THE EVIDENCE STANDARD REQUIRED TO
19 SUPPORT A CONCLUSION THAT INTERCOMPANY TRANSACTIONS OF SUCH
20 CORPORATION HAVE RESULTED IN THE IMPROPER SHIFTING OF TAXABLE
21 INCOME FROM A TAXPAYER TO ANOTHER MEMBER OR MEMBERS OF ITS
22 AFFILIATED GROUP NOT SUBJECT TO TAX UNDER THE INCOME TAX LAW, OR
23 THAT THE INTERCOMPANY TRANSACTIONS OF SUCH CORPORATIONS HAVE
24 RESULTED IN THE IMPROPER SHIFTING OF TAXABLE INCOME BETWEEN
25 MEMBERS OF THE INCLUDED AFFILIATED GROUP; TO PROHIBIT THE
26 COMMISSIONER OF REVENUE FROM ASSESSING CERTAIN PENALTIES ARISING
27 FROM REQUIRING A COMBINED RETURN EXCEPT UPON PREPONDERANCE OF THE
28 EVIDENCE THAT THE TAXPAYER'S METHOD WAS WITHOUT REASONABLE BASIS



29 OR THE INTERCOMPANY TRANSACTIONS AT ISSUE LACKED ANY MATERIAL
30 NON-TAX BUSINESS PURPOSE; TO PROVIDE THAT THE PERIOD OF TIME TO
31 RESPOND TO CERTAIN NOTICES TO TAXPAYERS UNDER THE INCOME TAX LAW
32 SHALL BEGIN FROM THE DATE OF MAILING OR HAND DELIVERING THE
33 NOTICE; TO REDUCE CERTAIN INTEREST PENALTIES THAT MAY BE IMPOSED
34 BY THE COMMISSIONER OF REVENUE UNDER THE INCOME TAX LAW FROM 1% TO
35 1/2 OF 1% PER MONTH; TO MAKE THE IMPOSITION OF SUCH PENALTIES
36 DISCRETIONARY; TO APPLY CERTAIN PENALTIES TO THE TAX DEFICIENCY OR
37 DELINQUENCY RATHER THAN THE AMOUNT OF THE TAX; TO PROVIDE THAT A
38 TAXPAYER'S FAILURE TO FILE AN APPEAL FOR DENIAL OR REFUND OF
39 OVERPAYMENT BASED ON THE FAILURE OF THE OVERPAYMENT TO BE PAID THE
40 TAXPAYER WITHIN SIX MONTHS, DOES NOT PREJUDICE THE TAXPAYER'S
41 RIGHT TO FILE AN APPEAL UPON A SUBSEQUENT FORMAL DENIAL; TO AMEND
42 SECTION 27-13-23 AND 27-13-25, MISSISSIPPI CODE OF 1972, TO
43 PROVIDE THAT THE PERIOD OF TIME TO RESPOND TO CERTAIN NOTICES TO
44 TAXPAYERS UNDER THE FRANCHISE TAX LAW SHALL BEGIN FROM THE DATE OF
45 MAILING OR HAND DELIVERING THE NOTICE; TO REDUCE CERTAIN INTEREST
46 PENALTIES THAT MAY BE IMPOSED BY THE COMMISSIONER OF REVENUE UNDER
47 THE FRANCHISE TAX LAW FROM 1% TO 1/2% OF 1% PER MONTH; TO MAKE THE
48 IMPOSITION OF SUCH PENALTIES DISCRETIONARY; TO APPLY CERTAIN
49 PENALTIES TO THE TAX DEFICIENCY OR DELINQUENCY RATHER THAN THE
50 AMOUNT OF THE TAX; TO AMEND SECTIONS 27-65-31, 27-65-35, 27-65-37
51 AND 27-65-39, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FOR
52 PURPOSES OF THE SALES TAX LAW, THERE SHALL BE A PRESUMPTION THAT A
53 SELLER COLLECTED THE TAX FROM A CUSTOMER OR PURCHASER; TO PROVIDE
54 THAT PENALTIES FOR FAILURE TO REMIT FUNDS COLLECTED BY A SELLER
55 UNDER THE SALES TAX LAW SHALL NOT BE LEVIED UNLESS THE
56 COMMISSIONER PROVES BY PREPONDERANCE OF THE EVIDENCE THAT THE
57 TAXPAYER ACTUALLY COLLECTED THE FUNDS FROM THE PURCHASER AND
58 KNOWINGLY AND INTENTIONALLY FAILED TO REMIT THEM; TO PROVIDE THAT
59 THE PERIOD OF TIME TO RESPOND TO CERTAIN NOTICES TO TAXPAYERS
60 UNDER THE SALES TAX LAW SHALL BEGIN FROM THE DATE OF MAILING OR
61 HAND DELIVERING THE NOTICE; TO REDUCE CERTAIN INTEREST PENALTIES
62 THAT MAY BE IMPOSED BY THE COMMISSIONER OF REVENUE UNDER THE SALES
63 TAX LAW FROM 1% TO 1/2% OF 1% PER MONTH; TO MAKE THE IMPOSITION OF
64 SUCH PENALTIES DISCRETIONARY; TO APPLY CERTAIN PENALTIES TO THE
65 TAX DEFICIENCY OR DELINQUENCY RATHER THAN THE AMOUNT OF THE TAX;
66 TO PROVIDE THAT IN REGARD TO THE PENALTY FOR DEFICIENT OR
67 DELINQUENT SALES TAX THAT IS INTENTIONAL, A TAXPAYER'S PURPORTED
68 DISREGARD OF INSTRUCTIONS GIVEN THROUGH AN AUDIT SHALL NOT BE A
69 BASIS FOR THE IMPOSITION OF THE PENALTY; TO AMEND SECTIONS
70 27-77-1, 27-77-5 AND 27-77-7, MISSISSIPPI CODE OF 1972, TO REVISE
71 THE MEANING OF "MAIL," "MAILED" OR "MAILING" UNDER THE LAWS
72 GOVERNING THE BOARD OF TAX APPEALS; TO EXPAND THE ACTIONS THAT MAY
73 BE APPEALED TO THE BOARD OF TAX APPEALS; TO PROVIDE THAT IF THE
74 DEPARTMENT OF REVENUE'S BOARD OF REVIEW DOES NOT ISSUE AN ORDER
75 WITHIN NINE MONTHS OF A HEARING, THE TAXPAYER MAY TREAT THE
76 FAILURE TO ISSUE AN ORDER AS A DENIAL OF THE RELIEF REQUESTED IN
77 THE HEARING AND APPEAL TO THE BOARD OF TAX APPEALS; TO PROVIDE
78 THAT AT HEARINGS BEFORE THE BOARD OF TAX APPEALS, THE BOARD SHALL



79 GIVE NO DEFERENCE TO THE DECISION OF THE DEPARTMENT OF REVENUE,
80 BUT SHALL GIVE DEFERENCE TO THE DEPARTMENT'S INTERPRETATION AND
81 APPLICATION OF STATUTES AS REFLECTED IN DULY ENACTED REGULATIONS
82 AND OTHER OFFICIALLY ADOPTED PUBLICATIONS; TO PROVIDE THAT IT
83 SHALL CONDUCT A HEARING ON ALL FACTUAL AND LEGAL ISSUES RAISED BY
84 THE TAXPAYER WHICH ADDRESS THE SUBSTANTIVE OR PROCEDURAL PROPRIETY
85 OF THE ACTIONS BEING APPEALED; TO PROVIDE THAT IF THE BOARD OF TAX
86 APPEALS DOES NOT ISSUE AN ORDER WITHIN NINE MONTHS OF A HEARING,
87 THE TAXPAYER MAY TREAT THE FAILURE TO ISSUE AN ORDER AS A DENIAL
88 OF THE RELIEF REQUESTED IN THE HEARING AND APPEAL TO THE CHANCERY
89 COURT; TO PROVIDE THAT ANY APPEAL OR OTHER FILING WITH THE BOARD
90 OF REVIEW OR BOARD OF TAX APPEALS SHALL BE CONSIDERED TIMELY IF IT
91 IS HAND DELIVERED, MAILED, POSTMARKED, SHIPPED, OR ELECTRONICALLY
92 TRANSMITTED VIA ELECTRONIC MAIL, ELECTRONIC FILING OR FACSIMILE BY
93 MIDNIGHT OF THE DUE DATE FOR THE FILING; TO REMOVE THE REQUIREMENT
94 THAT A TAXPAYER MUST POST A BOND TO APPEAL DECISIONS OF THE BOARD
95 OF TAX APPEALS; TO PROVIDE THAT IN APPEALS OF DECISIONS OF THE
96 BOARD OF TAX APPEALS TO THE CHANCERY COURT, THE COURT WILL TRY THE
97 CASE DE NOVO AND CONDUCT A FULL EVIDENTIARY JUDICIAL HEARING ON
98 ALL FACTUAL AND LEGAL ISSUES RAISED WHICH ADDRESS THE SUBSTANTIVE
99 OR PROCEDURAL PROPRIETY OF THE ACTIONS OF THE DEPARTMENT OF
100 REVENUE BEING APPEALED; AND FOR RELATED PURPOSES.

CONFEREES FOR THE HOUSE

CONFEREES FOR THE SENATE

X (SIGNED)
Smith (39th)

X (SIGNED)
Fillingane

X (SIGNED)
Rogers (61st)

X (SIGNED)
Kirby

X (SIGNED)
Reynolds

X (SIGNED)
Doty

