

By: Representative Smith (39th)

To: Ways and Means

HOUSE BILL NO. 799  
(As Sent to Governor)

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.

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

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

105 27-7-23. (a) **Definitions.**

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

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

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

116 (C) The selling or distributing of merchandise to  
117 customers in Mississippi directly from a company-owned or operated  
118 vehicle when title to the merchandise is transferred from the



119 seller or distributor to the customer at the time of the sale or  
120 distribution (transient selling); or

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

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

125 (F) The performing of contracts, prime or sublet  
126 work, for the construction, repair or renovation of real or  
127 personal property.

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

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



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

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

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

166 (i) Under the functional test, business  
167 income need not be derived from transactions or activities that  
168 are in the regular course of the taxpayer's own particular trade



169 or business. It shall be sufficient if the property from which  
170 the income is derived is or was an integral, functional, necessary  
171 or operative component of the taxpayer's trade or business  
172 operations, part of which trade or business is or was conducted  
173 within this state.

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

188 (iii) Under the functional test, income from  
189 intangible property is business income when the intangible  
190 property serves an operating function, as opposed to solely an  
191 investment function. The relevant inquiry shall focus on whether  
192 the property is or was held in furtherance of the taxpayer's trade  
193 or business, that is, on the objective characteristics of the



194 intangible property's use or acquisition and its relation to the  
195 taxpayer and the taxpayer's activities. The functional test is  
196 not satisfied where the holding of the property is limited solely  
197 to an investment function as in the case where the holding of the  
198 property is limited to mere financial betterment of the taxpayer  
199 in general.

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

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

212 (vi) Application of the functional test is  
213 generally unaffected by the form of the property. Income arising  
214 from intangible property is business income when the intangible  
215 property itself or the underlying value of the intangible property  
216 is or was an integral, functional, necessary or operative  
217 component to the taxpayer's trade or business operation.

218 Therefore, while treatment of income derived from transactions



219 involving intangible property as business income may be supported  
220 by a finding that the issuer of the intangible property and the  
221 taxpayer are engaged in the same trade or business, establishment  
222 of such a relationship is not the exclusive basis for concluding  
223 that the income constitutes business income. It is sufficient to  
224 support a finding of business income if the holding of the  
225 intangible property served an operational rather than an  
226 investment function.

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

229 (4) "Commercial domicile" means the principal place  
230 from which the trade or business of the taxpayer is directed or  
231 managed.

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

236 (b) **Nonresident individuals, partnerships, trusts and**  
237 **estates.**

238 (1) The tax imposed by this article shall apply to the  
239 entire net income of a taxable nonresident derived from  
240 employment, trade, business, professional, personal service or  
241 other activity for financial gain or profit, performed or carried  
242 on within Mississippi, including the rental of real or personal  
243 property located within this state or for use herein and including





244 the sale or exchange or other disposition of tangible or  
245 intangible property having a situs in Mississippi.

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

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

266 (c) **Foreign corporations, associations, organizations and**  
267 **other entities.**



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

276           (2) Allocation and apportionment of income.

277           (A) Except as provided in Sections 27-7-24,  
278 27-7-24.1, 27-7-24.3, 27-7-24.5 \* \* \*, 27-7-24.7 and 27-7-24.8,  
279 Mississippi Code of 1972, any corporation or organization having  
280 business income from business activity which is taxable both  
281 within and without this state shall allocate and apportion its net  
282 business income as prescribed by regulations enacted by the  
283 commissioner. If the business income of the corporation is  
284 derived solely from property owned or business done in this state  
285 and the corporation is not taxable in another state, the entire  
286 business income shall be allocated to this state. A corporation  
287 is taxable in another state if, in that state the corporation is  
288 subject to a net income tax, or a franchise tax measured by net  
289 income, or if that state has jurisdiction to subject the  
290 corporation to a net income tax regardless of whether the state  
291 does or does not subject the corporation to a net income tax.



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

298                   (i) Separate accounting;

299                   (ii) The exclusion of any one or more of the  
300 factors;

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

304                   (iv) The employment of any other method to  
305 effectuate an equitable allocation and apportionment of the  
306 taxpayer's income.

307                   (C) In any instance in which a taxpayer requests  
308 or the commissioner requires the use of any of the alternative  
309 apportionment methods in subparagraph (B) of this paragraph, the  
310 party requesting or requiring the method shall bear the burden of  
311 proving by preponderance of the evidence in any administrative or  
312 judicial proceeding that the methods set forth in this section or  
313 the commissioner's regulations do not fairly represent the extent  
314 of the taxpayer's business activity in this state and that the  
315 proposed method more fairly represents that activity than any  
316 other reasonable method available. The alternative apportionment



317 authority specified in this subparagraph (D) is intended to be  
318 invoked only in limited and unique, nonrecurring circumstances  
319 where the standard apportionment provisions contained in the  
320 statutes and regulations produce unanticipated results that do not  
321 fairly represent the extent of the taxpayer's business activity in  
322 this state.

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

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

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

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



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

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

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

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

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

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

363 (I) All expenses connected with earning  
364 nonbusiness income, such as interest, taxes, general and  
365 administrative expenses and such other expenses relating to the  
366 production of nonbusiness income, shall be deducted from gross



367 nonbusiness income. Nonbusiness interest expense shall be  
368 computed by using the ratio of nonbusiness assets to total assets  
369 applied to total interest expense.

370 (d) **Foreign lenders.**

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

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



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

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



416 maximum sum required herein as advance payment of taxes due on the  
417 net income realized from any contract or contracts performed or  
418 completed in this state.

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

421         27-7-24. (1) Except as otherwise specifically provided, a  
422 financial institution whose business activity is taxable both  
423 within and without this state shall allocate and apportion its net  
424 income as provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3,  
425 27-7-24.5 and 27-7-24.7, Mississippi Code of 1972. All items of  
426 nonbusiness income (income which is not includable in the  
427 apportionable income tax base) shall be allocated pursuant to the  
428 provisions of Section 27-7-23, Mississippi Code of 1972. A  
429 financial institution organized under the laws of a foreign  
430 country, the Commonwealth of Puerto Rico, or a territory or  
431 possession of the United States whose effectively connected  
432 income, as defined under the federal Internal Revenue Code, as in  
433 effect January 1, 1996, is taxable both within this state and  
434 within another state, other than the state in which it is  
435 organized, shall allocate and apportion its net income as provided  
436 in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and  
437 27-7-24.7, Mississippi Code of 1972.

438         (2) All business income (income which is includable in the  
439 apportionable income tax base) shall be apportioned to this state  
440 by multiplying such income by the apportionment percentage. The





441 apportionment percentage is determined by adding the taxpayer's  
442 receipts factor (as described in Section 27-7-24.3), property  
443 factor (as described in Section 27-7-24.5), and payroll factor (as  
444 described in Section 27-7-24.7) together and dividing the sum by  
445 three (3). If one (1) of the factors is missing, the two (2)  
446 remaining factors are added and the sum is divided by two (2). If  
447 two (2) of the factors are missing, the remaining factor is the  
448 apportionment percentage. A factor is missing if both its  
449 numerator and denominator are zero (0), but is not missing merely  
450 because its numerator is zero (0).

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

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

- 460 (a) Separate accounting;
- 461 (b) The exclusion of any one or more of the factors;
- 462 (c) The inclusion of one or more additional factors  
463 which will fairly represent the taxpayer's business activity in  
464 this state; or



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

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

483 (5) The commissioner shall be prohibited from assessing any  
484 penalties related to a deficiency arising from requiring the use  
485 of an alternative apportionment method under subsection (4) of  
486 this section unless the commissioner shall establish by  
487 preponderance of the evidence that the taxpayer's method was  
488 without reasonable basis or was not in accordance with existing  
489 statutes or regulations.



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

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

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

510                   (ii) The commissioner may require a corporation  
511 taxable under this article that is affiliated with one or more  
512 corporations that are not taxable under this article to file a  
513 combined return with the affiliated corporation or corporations if  
514 he \* \* \* establishes by preponderance of the evidence that the



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

531 (iii) The commissioner shall not require the  
532 filing of a combined return pursuant to the authority granted  
533 under subparagraph (ii) of this paragraph until regulations shall  
534 have been enacted specifying the criteria and circumstances that  
535 form the basis for meeting the preponderance of the evidence  
536 standard required to support a conclusion that intercompany  
537 transactions of such taxable corporation have resulted in the  
538 improper shifting of taxable income from a taxpayer to another  
539 member or members of its affiliated group not subject to tax under



540 this article, or that the intercompany transactions of such  
541 corporations have resulted in the improper shifting of taxable  
542 income between members of the included affiliated group.

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

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

563 (c) The commissioner shall prescribe such regulations  
564 as he may deem necessary in order that the tax liability of any



565 affiliated group of corporations making a combined return and of  
566 each corporation in the group, both during and after the period of  
567 affiliation, may be returned, determined, computed, assessed,  
568 collected and adjusted, in such manner as clearly to reflect the  
569 income tax liability and the various factors necessary for the  
570 determination of such liability, and in order to prevent avoidance  
571 of such tax liability.

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

586 (e) If a corporation elects or is required to file  
587 returns on a combined basis, all subsequent returns shall be made  
588 upon the same basis unless permission to change the basis is



589 granted by the commissioner, or unless the commissioner requires a  
590 change in the basis.

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

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

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

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

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



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

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

632 (3) In case of failure to pay any additional taxes as  
633 assessed under this section, there may be added to the additional  
634 amount assessed a penalty of one-half of one percent (1/2 of 1%)  
635 of the amount of the additional tax if the failure is for not more  
636 than one (1) month, with an additional one-half of one percent  
637 (1/2 of 1%) for each additional month or fraction thereof during





638 which the failure continues, not to exceed twenty-five percent  
639 (25%) in the aggregate.

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

661 (5) In the case of a taxpayer who \* \* \* appeals the decision  
662 of the Board of Tax Appeals \* \* \* and the tax assessment or a part



663 of the assessment is upheld by the chancery court and/or the  
664 Supreme Court, the assessment \* \* \* may bear interest at the rate  
665 of one percent (1%) per month, except as otherwise provided in  
666 subsection (6) of this section, from the due date until paid.

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

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

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

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

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

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

684 ( \* \* \*7) (a) Nothing in this section shall be construed as  
685 authorizing a refund of taxes for claims pursuant to the United  
686 States Supreme Court decision of *Davis v. Michigan Department of*



687 *Treasury*, 109 S.Ct. 1500 (1989). These taxes were not incorrectly  
688 and/or erroneously collected as contemplated by this chapter.

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

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

696 27-7-53. (1) (a) Except as otherwise provided in this  
697 section, if a return is timely filed by the taxpayer but the tax  
698 due is not paid, the commissioner shall make his assessment of tax  
699 due by mail or by personal delivery of the assessment to the  
700 taxpayer, which assessment shall constitute notice and demand for  
701 payment. The taxpayer shall be given a period of sixty (60) days  
702 from the date \* \* \* the commissioner mailed or hand delivered the  
703 notice in which to pay the tax due, including penalty and interest  
704 as hereinafter provided, and if the sum is not paid within the  
705 period of sixty (60) days, the commissioner shall proceed to  
706 collect it under the provisions of Sections 27-7-55 through  
707 27-7-67 of this article; provided that within the period of sixty  
708 (60) days the taxpayer may appeal to the Board of Review as  
709 provided by law.

710 (b) (i) If an individual return is timely filed by the  
711 taxpayer and the amount of tax liability (determined without



712 regard to interest, penalties, additions to the tax and additional  
713 amounts) of the taxpayer exceeds Seventy-five Dollars (\$75.00) but  
714 does not exceed Three Thousand Dollars (\$3,000.00), the taxpayer  
715 may request to pay the tax liability through an installment  
716 agreement.

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

726 (iii) The taxpayer must file such a request with  
727 the return and must provide all information required by the  
728 commissioner.

729 (iv) If the commissioner determines a taxpayer is  
730 financially unable to pay the tax liability, the commissioner may  
731 enter into an agreement to accept payment of the tax liability in  
732 installments if:

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



736 a. Failed to file any return required by  
737 this chapter,  
738 b. Failed to pay any tax required by  
739 this chapter, or  
740 c. Entered into an installment agreement  
741 under this paragraph (b);  
742 2. The agreement requires full payment of the  
743 tax liability in equal installments within twelve (12) months from  
744 the date the return was filed if the tax liability falls within  
745 the provisions of subparagraph (i) of this paragraph, or within  
746 sixty (60) months from the date the return was filed if the tax  
747 liability falls within the provisions of subparagraph (ii) of this  
748 paragraph; and  
749 3. The taxpayer agrees to comply with the  
750 terms of the agreement.  
751 (v) Payments made through an installment agreement  
752 shall be subject to the interest provisions of subsection (3) of  
753 this section.  
754 (vi) The commissioner may terminate an installment  
755 agreement entered into under this paragraph (b) if he determines  
756 the taxpayer provided inaccurate or incomplete information before  
757 the agreement was entered into or he believes the collection of  
758 the tax to which the agreement relates is in jeopardy.



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

762 1. Pay any installment due under the  
763 agreement;

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

766 3. Provide a statement of financial condition  
767 required by the commissioner.

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



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

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

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

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

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

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

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

805           (4) In case of failure to file a return as required by this  
806 chapter, there may be added to the amount required to be shown as  
807 tax on the return a penalty of five percent (5%) of the total  
808 amount of the deficiency or delinquency of the tax if the failure



809 is for not more than one (1) month, with an additional five  
810 percent (5%) for each additional month or fraction thereof during  
811 which the failure continues, not to exceed twenty-five percent  
812 (25%) in the aggregate. The failure to file a return penalty  
813 shall not be less than One Hundred Dollars (\$100.00).

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

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

827 27-7-315. (1) If any overpayment of any tax, interest or  
828 penalty levied or provided for by Article 1 of this chapter, or in  
829 this article, is not refunded to the taxpayer as provided in  
830 Section 27-7-313 within six (6) months after the final date for  
831 filing returns as prescribed by law, the taxpayer may treat the  
832 failure to refund as a denial of a refund claim and appeal in the  
833 manner provided for in Section 27-77-5. A taxpayer's failure to





834 file an appeal based on this deemed denial shall not prejudice or  
835 otherwise jeopardize the taxpayer's right to file an appeal upon a  
836 subsequent formal denial in the manner provided for in Section  
837 27-77-5.

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



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

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

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

880           (d) Six-tenths of one percent (6/10 of 1%) per month  
881 for any overpayment reflected on a return or amended return filed  
882 on or after January 1, 2018, and before January 1, 2019, or any  
883 overpayment based on a determination of refund by the



884 commissioner, the Board of Tax Appeals or court on or after  
885 January 1, 2018, and before January 1, 2019, where no overpayment  
886 is shown on a return or amended return;

887 (e) One-half of one percent (1/2 of 1%) per month for  
888 any overpayment reflected on a return or amended return filed on  
889 or after January 1, 2019, or any overpayment based on a  
890 determination of refund by the commissioner, the Board of Tax  
891 Appeals or court on or after January 1, 2019, where no overpayment  
892 is shown on a return or amended return.

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

895 27-7-327. Taxpayers subject to the requirements of estimated  
896 tax payments for an income year ending after December 31, 1983,  
897 shall estimate an amount not less than eighty percent (80%) of the  
898 tax actually due in the case of an individual or, except as  
899 otherwise provided in Section 27-7-329(f), an amount not less than  
900 ninety percent (90%) of the tax actually due in the case of a  
901 corporation. Any corporate taxpayer which either fails to file  
902 the required estimated tax returns and pay the tax within the time  
903 prescribed, or, except as otherwise provided in Section  
904 27-7-329(f), which underestimates the required amount of the  
905 estimated tax shall be liable for a penalty in the amount of ten  
906 percent (10%) of the amount unpaid plus interest at the rate of  
907 one percent (1%) per month on such amount, except as otherwise  
908 provided in this section. Any individual taxpayer who either



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

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

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

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

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

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

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

932 27-7-345. Any taxpayer who either fails to file a required  
933 return within the time prescribed, or who fails to remit the tax



934 or remits less than the amount due under the return, shall be  
935 liable for the following penalties:

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

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

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

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

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



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

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

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

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

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



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

984           27-13-23. (1) If a return is timely filed by the taxpayer  
985 but the tax is not paid, the commissioner shall make his  
986 assessment of tax due by mail or by personal delivery of the  
987 assessment to the taxpayer, which assessment shall constitute  
988 notice and demand for payment. The taxpayer shall be given a  
989 period of sixty (60) days from the date \* \* \* the commissioner  
990 mailed or hand delivered the notice in which to pay the tax due,  
991 including penalty and interest as provided in this section, and if  
992 the sum is not paid within the sixty-day period, the commissioner  
993 shall proceed to collect it under the provisions of Sections  
994 27-13-29 through 27-13-41 of this chapter; provided that within  
995 the sixty-day period the taxpayer may appeal to the Board of  
996 Review as provided by law.

997           (2) If no return is made by a taxpayer required by this  
998 chapter to make a return, the commissioner shall determine the  
999 taxpayer's liability from the best information available, which  
1000 determination shall be prima facie correct for the purpose of this  
1001 chapter, and the commissioner shall forthwith make an assessment  
1002 of the tax so determined to be due by mail or by personal delivery  
1003 of the assessment to the taxpayer, which assessment shall  
1004 constitute notice and demand for payment. The taxpayer shall be  
1005 given a period of sixty (60) days from the date \* \* \* the  
1006 commissioner mailed or hand delivered the notice in which to pay



1007 the tax due, including penalty and interest as provided in this  
1008 section, and if the sum is not paid within the sixty-day period,  
1009 the commissioner shall proceed to collect it under the provisions  
1010 of Sections 27-13-29 through 27-13-41 of this chapter; provided  
1011 that within the sixty-day period the taxpayer may appeal to the  
1012 Board of Review as provided by law.

1013 (3) (a) Except as otherwise provided in this subsection,  
1014 interest at the rate of one percent (1%) per month on the total  
1015 amount of the deficiency or delinquency of the tax from the due  
1016 date of the return \* \* \* may be added or assessed in addition to  
1017 the tax due as provided in subsections (1) and (2) of this  
1018 section.

1019 (b) For taxes assessed by the commissioner on or after  
1020 January 1, 2015, the rate of any interest assessed under this  
1021 section shall be:

1022 (i) Nine-tenths of one percent (9/10 of 1%) per  
1023 month for such taxes assessed on or after January 1, 2015, and  
1024 before January 1, 2016;

1025 (ii) Eight-tenths of one percent (8/10 of 1%) per  
1026 month for such taxes assessed on or after January 1, 2016, and  
1027 before January 1, 2017;

1028 (iii) Seven-tenths of one percent (7/10 of 1%) per  
1029 month for such taxes assessed on or after January 1, 2017, and  
1030 before January 1, 2018;





1031                    (iv) Six-tenths of one percent (6/10 of 1%) per  
1032 month for such taxes assessed on or after January 1, 2018, and  
1033 before January 1, 2019; and

1034                    (v) One-half of one percent (1/2 of 1%) per month  
1035 for such taxes assessed on or after January 1, 2019.

1036            (4) In case of failure to file a return as required by this  
1037 chapter, unless it can be shown that the failure is due to  
1038 reasonable cause and not due to willful neglect, there \* \* \* may  
1039 be added to the amount required to be shown as tax on the return a  
1040 penalty of five percent (5%) of the total amount of the deficiency  
1041 or delinquency of the tax if the failure is for not more than one  
1042 (1) month, with an additional five percent (5%) for each  
1043 additional month or fraction thereof during which the failure  
1044 continues, not to exceed twenty-five percent (25%) in the  
1045 aggregate.

1046            (5) In case of failure to pay the amount shown as tax on any  
1047 return specified in subsections (1) and (2) of this section on or  
1048 before the date prescribed for payment of the tax, determined with  
1049 regard to any extension of time for payment, unless it is shown  
1050 that the failure is due to reasonable cause and not due to willful  
1051 neglect, there \* \* \* may be added to the amount shown as tax on  
1052 the return one-half of one percent (1/2 of 1%) of the total amount  
1053 of the deficiency or delinquency of the tax if the failure is for  
1054 not more than one (1) month, with an additional one-half of one  
1055 percent (1/2 of 1%) for each additional month or fraction thereof



1056 during which the failure continues, not to exceed twenty-five  
1057 percent (25%) in the aggregate.

1058         **SECTION 10.** Section 27-13-25, Mississippi Code of 1972, is  
1059 amended as follows:

1060         27-13-25. (1) If, upon examination of a return made under  
1061 the provisions of this chapter, it appears that the correct amount  
1062 of tax is greater or less than that shown in the return, the tax  
1063 shall be recomputed. Any overpayment of tax so determined shall  
1064 be credited or refunded to the taxpayer. If the correct amount of  
1065 tax is greater than that shown in the return of the taxpayer, the  
1066 commissioner shall make his assessment of additional tax due by  
1067 mail or by personal delivery of the assessment to the taxpayer,  
1068 which assessment shall constitute notice and demand for payment.  
1069 The taxpayer shall be given a period of sixty (60) days from the  
1070 date \* \* \* the commissioner mailed or hand delivered the notice in  
1071 which to pay the additional tax due, including penalty and  
1072 interest as provided in this section, and if the sum is not paid  
1073 within the sixty-day period, the commissioner shall proceed to  
1074 collect it under the provisions of Sections 27-13-29 through  
1075 27-13-41, provided that within the sixty-day period the taxpayer  
1076 may appeal to the Board of Review as provided by law.

1077         (2) In the case of an overpayment of tax, interest shall be  
1078 computed under the provisions of Section 27-7-315. In the case of  
1079 an underpayment of tax, interest at the rate of one percent (1%)  
1080 per month, except as otherwise provided in this subsection, from



1081 the due date of the return \* \* \* may be added or assessed in  
1082 addition to the additional tax due as provided in subsection (1)  
1083 of this section. For taxes assessed by the commissioner on or  
1084 after January 1, 2015, the rate of any interest assessed under  
1085 this section shall be:

1086 (a) Nine-tenths of one percent (9/10 of 1%) per month  
1087 for such taxes assessed on or after January 1, 2015, and before  
1088 January 1, 2016;

1089 (b) Eight-tenths of one percent (8/10 of 1%) per month  
1090 for such taxes assessed on or after January 1, 2016, and before  
1091 January 1, 2017;

1092 (c) Seven-tenths of one percent (7/10 of 1%) per month  
1093 for such taxes assessed on or after January 1, 2017, and before  
1094 January 1, 2018;

1095 (d) Six-tenths of one percent (6/10 of 1%) per month  
1096 for such taxes assessed on or after January 1, 2018, and before  
1097 January 1, 2019; and

1098 (e) One-half of one percent (1/2 of 1%) per month for  
1099 such taxes assessed on or after January 1, 2019.

1100 (3) In case of failure to pay any additional taxes as  
1101 assessed under this section, unless it is shown that the failure  
1102 is due to reasonable cause and not due to willful neglect,  
1103 there \* \* \* may be added to the additional amount assessed a  
1104 penalty of one-half of one percent (1/2 of 1%) of the amount of  
1105 the additional tax if the failure is for not more than one (1)



1106 month, with an additional one-half of one percent (1/2 of 1%) for  
1107 each additional month or fraction thereof during which the failure  
1108 continues, not to exceed twenty-five percent (25%) in the  
1109 aggregate.

1110         **SECTION 11.** Section 27-65-31, Mississippi Code of 1972, is  
1111 amended as follows:

1112         27-65-31. Any person liable for a privilege tax levied and  
1113 assessed by this chapter except the taxes levied by Sections  
1114 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of 1972,  
1115 shall add the amount of such tax due by him to the sales price or  
1116 gross income and, in addition thereto, shall collect, insofar as  
1117 practicable, the amount of the tax due by him from the purchaser  
1118 at the time the sales price or gross income is collected. For  
1119 purposes of this section, there shall be a presumption that the  
1120 taxpayer collected the tax from the customer or purchaser.

1121         The commissioner is authorized, in his discretion, to  
1122 prescribe by rule or regulation, brackets or schedules by which  
1123 the applicable tax shall be collected from the purchaser.

1124         The commissioner shall have the authority to make changes as  
1125 necessary by rule or regulation to implement an agreement for the  
1126 collection of sales tax by direct marketers with limited contact  
1127 in Mississippi if, in his discretion, it is beneficial to the  
1128 state for him to do so.

1129         It shall be unlawful for any person, who is liable for a  
1130 privilege tax levied by this chapter except the taxes levied by



1131 Sections 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of  
1132 1972, to fail or refuse to add to the sales price and collect,  
1133 insofar as practicable, the amount of tax due by him on each sale,  
1134 except where the tax was included in the cost of furnishing  
1135 service when said cost was a factor in the fixing of rates and  
1136 charges.

1137         The tax due under the provisions of this chapter shall be  
1138 computed and paid on gross income or gross proceeds of sales of  
1139 the business, regardless of the fact that small unit sales may be  
1140 within the bracket of one (1) of the schedules which does not  
1141 provide for the collection of the tax from the customer.

1142         Nothing in this section with reference to the collection of  
1143 the tax from the customer shall be construed to impair, abridge,  
1144 alter or affect the obligation of any contract in existence at the  
1145 time it becomes effective.

1146         When the tax collected for any filing period is in excess of  
1147 the amount due, the total tax collected, including that in excess  
1148 of the computed liability, shall be paid to the commissioner.  
1149 This provision shall be construed with other provisions of the law  
1150 and given effect so as to result in the payment to the  
1151 commissioner of the total tax collected if in excess of the amount  
1152 due when computed at the applicable rates.

1153         The funds collected by the taxpayer (seller) from the  
1154 purchaser pursuant to the provisions of this chapter shall be  
1155 considered "trust fund monies" and the taxpayer shall hold these



1156 funds in trust for the State of Mississippi \* \* \*. \* \* \* The  
1157 funds \* \* \* shall be separately accounted for as provided by  
1158 regulation of the commissioner. If the taxpayer fails to remit  
1159 these trust fund monies as required by law, then the taxpayer may  
1160 be assessed with a penalty in three (3) times the amount of taxes  
1161 due. This penalty is to be assessed and collected in the same  
1162 manner as taxes imposed by this chapter and shall be in addition  
1163 to all other penalties and/or interest otherwise imposed. \* \* \*  
1164 Notwithstanding any other provision of this section, the penalty  
1165 imposed in this paragraph shall not be imposed based on any  
1166 presumption that the taxpayer collected sales tax from the  
1167 purchaser. The penalty provided in this paragraph shall not be  
1168 levied unless the commissioner shall prove by preponderance of the  
1169 evidence that the taxpayer actually collected these trust fund  
1170 monies from the purchaser and knowingly and intentionally failed  
1171 to remit them.

1172 Any person violating the provisions of this section shall be  
1173 guilty of a misdemeanor and, upon conviction, shall be fined in a  
1174 sum not less than Fifty Dollars (\$50.00) nor more than One Hundred  
1175 Dollars (\$100.00).

1176 **SECTION 12.** Section 27-65-35, Mississippi Code of 1972, is  
1177 amended as follows:

1178 27-65-35. If no return is made on or before the due date by  
1179 any taxpayer required to make a return, the commissioner, as soon  
1180 as practicable after the due date, shall make an assessment of



1181 taxes and damages from any information available, which shall be  
1182 prima facie correct. The commissioner shall give written notice  
1183 by mail or by personal delivery to the taxpayer of the tax and  
1184 damages thus assessed and demand payment within sixty (60) days  
1185 from the date \* \* \* the commissioner mailed or hand delivered the  
1186 notice. \* \* \* In the case of an individual, the notice shall be  
1187 sent by mail to the taxpayer or delivered by an agent of the  
1188 commissioner to the taxpayer, to a manager or general agent at the  
1189 taxpayer's place of business or to someone above the age of  
1190 sixteen (16) years at the taxpayer's residence. In the case of a  
1191 partnership, the notice shall be sent by mail to the partnership  
1192 or delivered by an agent of the commissioner to any partner, to a  
1193 manager or general agent at the taxpayer's place of business or to  
1194 someone above the age of sixteen (16) years at the residence of  
1195 any partner. In the case of a corporation, limited liability  
1196 company, joint venture, association, estate, trust or other group  
1197 or combination acting as a unit, including any government entity,  
1198 the notice shall be sent by mail to the taxpayer or delivered by  
1199 an agent of the commissioner to an officer of the entity, to  
1200 someone above the age of sixteen (16) years at the residence of an  
1201 officer of the entity or to a manager or general agent at the  
1202 taxpayer's place of business. However, if the taxpayer shall file  
1203 a return and pay the tax shown to be due within sixty (60) days  
1204 from the date \* \* \* the commissioner mailed or hand delivered the



1205 assessment, the return and payment shall be accepted in lieu of  
1206 the assessment.

1207 **SECTION 13.** Section 27-65-37, Mississippi Code of 1972, is  
1208 amended as follows:

1209 27-65-37. (1) If adequate records of the gross income or  
1210 gross proceeds of sales are not maintained or invoices preserved  
1211 as provided herein, or if an audit of the records of a taxpayer,  
1212 or any return filed by him, or any other information discloses  
1213 that taxes are due and unpaid, the commissioner shall make  
1214 assessments of taxes, damages, and interest from any information  
1215 available, which shall be prima facie correct. However, if in an  
1216 audit of the records of a taxpayer it is determined that during  
1217 the period being audited the taxpayer reported and paid tax in  
1218 accordance with a method used during a prior period which had been  
1219 audited by the commissioner and not found to result in any  
1220 additional tax due, the commissioner shall be estopped from  
1221 collecting any additional tax as a result of the use of this  
1222 previously audited method for any period prior to notification by  
1223 the commissioner or his agent during the current audit that use of  
1224 the previously audited method would result in additional tax being  
1225 due if it is determined, through all information available  
1226 regarding this taxpayer, that:

1227 (a) The method in issue was previously audited by the  
1228 commissioner with no additional tax determined to be due under  
1229 such method;





1230 (b) The method under consideration in the current audit  
1231 is the same method that was used in the prior audit;

1232 (c) There has not been a statutory or regulatory change  
1233 that would have resulted in additional tax being due under this  
1234 method after the statutory or regulatory change; and

1235 (d) The taxpayer detrimentally relied on the fact that  
1236 this method had been previously audited and not found to result in  
1237 additional tax.

1238 (2) \* \* \* The commissioner shall give notice to the taxpayer  
1239 of the assessments and demand payment of the tax, damages and  
1240 interest within sixty (60) days from the date the commissioner  
1241 mailed or hand delivered the notice. The notice shall be sent by  
1242 regular first class mail or delivered by an agent of the  
1243 commissioner. In the case of an individual, the notice shall be  
1244 sent by mail to the taxpayer or delivered by an agent of the  
1245 commissioner to the taxpayer, to a manager or general agent at the  
1246 taxpayer's place of business or to someone above the age of  
1247 sixteen (16) years at the taxpayer's residence. In the case of a  
1248 partnership, the notice shall be sent by mail to the partnership  
1249 or delivered by an agent of the commissioner to any partner, to a  
1250 manager or general agent at the taxpayer's place of business or to  
1251 someone above the age of sixteen (16) years at the residence of  
1252 any partner. In the case of a corporation, limited liability  
1253 company, joint venture, association, estate, trust or other group  
1254 or combination acting as a unit, including any government entity,



1255 the notice shall be sent by mail to the taxpayer or delivered by  
1256 an agent of the commissioner to an officer of the entity, to  
1257 someone above the age of sixteen (16) years at the residence of an  
1258 officer of the entity or to a manager or general agent at the  
1259 taxpayer's place of business.

1260 (3) If the taxpayer shall fail or refuse to comply with the  
1261 notice of assessment or shall fail to petition for a hearing, the  
1262 commissioner shall proceed as provided in Section 27-65-39.

1263 **SECTION 14.** Section 27-65-39, Mississippi Code of 1972, is  
1264 amended as follows:

1265 27-65-39. If any part of the deficient or delinquent tax is  
1266 due to negligence or failure to comply with the provisions of this  
1267 chapter or authorized rules and regulations promulgated under the  
1268 provisions of this chapter without intent to defraud, there may be  
1269 added as damages ten percent (10%) of the total amount of  
1270 deficiency or delinquency in the tax, or interest at the rate of  
1271 one percent (1%) per month, except as otherwise provided in this  
1272 section, or both, from the date such tax was due until paid, and  
1273 the tax, damages and interest shall become payable upon notice and  
1274 demand by the commissioner.

1275 If any part of the deficient or delinquent tax is due to  
1276 intentional disregard of the provisions of this chapter or  
1277 authorized rules and regulations promulgated under the provisions  
1278 of this chapter, or is due to fraud with intent to evade the law,  
1279 then there \* \* \* may be added as damages fifty percent (50%) of



1280 the total amount of the deficiency or delinquency of the tax, and  
1281 in such case the whole amount of tax unpaid, including the charges  
1282 so added, shall become due and payable upon notice and demand by  
1283 the commissioner, and interest of one percent (1%) per month,  
1284 except as otherwise provided in this section, of the total amount  
1285 of the deficiency or delinquency of the tax \* \* \* may be added  
1286 from the date such tax was due until paid. Provided, however, no  
1287 such damages shall be added if the taxpayer establishes reasonable  
1288 cause for his negligence or failure to comply. A taxpayer's  
1289 purported disregard of instructions given through an audit shall  
1290 not be a basis for the imposition of the penalty provided in this  
1291 paragraph.

1292 For taxes assessed by the commissioner on or after January 1,  
1293 2015, the rate of any interest assessed under this section shall  
1294 be:

1295 (a) Nine-tenths of one percent (9/10 of 1%) per month  
1296 for such taxes assessed on or after January 1, 2015, and before  
1297 January 1, 2016;

1298 (b) Eight-tenths of one percent (8/10 of 1%) per month  
1299 for such taxes assessed on or after January 1, 2016, and before  
1300 January 1, 2017;

1301 (c) Seven-tenths of one percent (7/10 of 1%) per month  
1302 for such taxes assessed on or after January 1, 2017, and before  
1303 January 1, 2018;



1304                   (d) Six-tenths of one percent (6/10 of 1%) per month  
1305 for such taxes assessed on or after January 1, 2018, and before  
1306 January 1, 2019; and

1307                   (e) One-half of one percent (1/2 of 1%) per month for  
1308 such taxes assessed on or after January 1, 2019.

1309                   **SECTION 15.** Section 27-77-1, Mississippi Code of 1972, is  
1310 amended as follows:

1311                   27-77-1. As used in this chapter:

1312                   (a) "Agency" means the commissioner acting directly or  
1313 through his duly authorized officers, agents, representatives and  
1314 employees, to perform duties and powers prescribed by the laws of  
1315 this state to be performed by the Commissioner of Revenue or the  
1316 Department of Revenue.

1317                   (b) "Board of Review" means the Board of Review of the  
1318 Department of Revenue as appointed by the commissioner under  
1319 Section 27-77-3, and also means a panel of the Board of Review  
1320 when an appeal is considered by a panel of the Board of Review  
1321 instead of the Board of Review en banc.

1322                   (c) "Board of Tax Appeals" means the Board of Tax  
1323 Appeals as created under Section 27-4-1.

1324                   (d) "Chairman" means the Chairman of the Board of Tax  
1325 Appeals.

1326                   (e) "Commissioner" means the Commissioner of the  
1327 Department of Revenue.



1328 (f) "Denial" means the final decision of the staff of  
1329 the agency to deny the claim, request for waiver or application  
1330 being considered. In this context, staff of the agency does not  
1331 include the Board of Review or the Board of Tax Appeals. "Denial"  
1332 does not mean the act of returning or refusing to consider a  
1333 claim, request for waiver or application for permit, IFTA license,  
1334 IRP registration, title or tag by the staff of the agency due to a  
1335 lack of information and/or documentation unless the return or  
1336 refusal is in response to a representation by the person who filed  
1337 the claim, request for waiver or application in issue that  
1338 information and/or documentation indicated by the staff of the  
1339 agency to be lacking cannot or will not be provided.

1340 (g) "Designated representative" means an individual who  
1341 represents a person in an administrative appeal before a hearing  
1342 officer of the agency, before the Board of Review or before the  
1343 Board of Tax Appeals.

1344 (h) "Executive director" means the Executive Director  
1345 of the Board of Tax Appeals.

1346 (i) "IFTA license" means a permit, license or decal  
1347 which the agency is authorized to issue or revoke under the  
1348 Interstate Commercial Carriers Motor Fuel Tax Law (Section 27-61-1  
1349 et seq.) or the International Fuel Tax Agreement.

1350 (j) "IFTA licensee" means a person holding the IFTA  
1351 license, applying for an IFTA license or renewing an IFTA license.



1352           (k) "IRP registration" means the registration of a  
1353 vehicle under the provisions of the International Registration  
1354 Plan.

1355           (l) "IRP registrant" means a person in whose name a  
1356 vehicle or vehicles are registered under the provisions of the  
1357 International Registration Plan.

1358           (m) "IRP credentials" means the cab card and license  
1359 plate issued by the commissioner or agency in accordance with the  
1360 International Registration Plan.

1361           (n) "Last known address" when referring to the mailing  
1362 of a notice of intent to suspend, revoke or to order the surrender  
1363 and/or seizure of the permit, IFTA license, IRP registration, IRP  
1364 credentials, tag or title or to the mailing of a denial of the  
1365 permit, IFTA license, IRP registration, tag or title, means the  
1366 last mailing address of the person being sent the notice as it  
1367 appears on the record of the agency in regard to the permit, IFTA  
1368 license, IRP registration, tag or title in issue. All other  
1369 references to "last known address" in this chapter mean the  
1370 official mailing address that the hearing officer, the Board of  
1371 Review or the executive director has for the addressee in their  
1372 file on the administrative appeal in which the document or item is  
1373 being mailed to the addressee. The addressee is presumed to have  
1374 received any document or item mailed to his official mailing  
1375 address. The commissioner, by regulation, shall prescribe the  
1376 procedure for establishing an official mailing address in the



1377 administrative appeal process for appeals before an administrative  
1378 hearing officer or the Board of Review of the Department of  
1379 Revenue and the procedure for changing that official mailing  
1380 address. The Board of Tax Appeals, by regulation, shall prescribe  
1381 the procedure for establishing an official mailing address in the  
1382 administrative appeal process before that board and the procedure  
1383 for changing that official mailing address. It is the  
1384 responsibility of the addressee to make sure that his official  
1385 mailing address is correct.

1386           (o) "Mail," "mailed" or "mailing" means placing the  
1387 document or item referred to in \* \* \* United States mail, postage  
1388 prepaid, via mail, addressed to the person to whom the document or  
1389 item is to be sent at the last known address of that person.  
1390 Where a person is represented in an administrative appeal before a  
1391 hearing officer, the Board of Review or the Board of Tax Appeals  
1392 by a designated representative, the terms "mail," "mailed" or  
1393 "mailing" when referring to sending a document or item to that  
1394 person shall also mean placing the document or item referred to  
1395 in \* \* \* United States mail, via mail, postage prepaid, to the  
1396 last known address of that person's designated representative.  
1397 Mailing to the designated representative of a taxpayer, permittee,  
1398 IFTA licensee, IRP registrant, tag holder or title interest holder  
1399 shall constitute mailing and notice to the taxpayer, permittee,  
1400 IFTA licensee, IRP registrant, tag holder or title interest  
1401 holder.



1402 (p) "Permit" means a type of license or permit that the  
1403 agency is authorized to issue, suspend or revoke, such as a sales  
1404 tax permit, a beer permit, a tobacco permit, a dealer license, or  
1405 designated agent status, but does not include:

1406 (i) Any type of permit issued under the Local  
1407 Option Alcoholic Beverage Control Law, Section 67-1-1 et seq. or  
1408 under the Mississippi Native Wine Law of 1976, Section 67-5-1 et  
1409 seq.;

1410 (ii) An IFTA license; or

1411 (iii) An IRP registration, including the IRP  
1412 credential issued as a result of IRP registration.

1413 (q) "Permittee" means a person holding a permit,  
1414 applying for a permit or renewing a permit.

1415 (r) "Person" means a natural person, partnership,  
1416 limited partnership, corporation, limited liability company,  
1417 estate, trust, association, joint venture, other legal entity or  
1418 other group or combination acting as a unit, and includes the  
1419 plural as well as the singular in number. "Person" includes the  
1420 state, county, municipal, other political subdivision and any  
1421 agency, institution or instrumentality thereof, but only when used  
1422 in the context of a taxpayer, permittee, IFTA licensee, IRP  
1423 registrant, tag holder or title interest holder.

1424 (s) "Refund claim" means a claim made in writing by a  
1425 taxpayer and received by the agency wherein the taxpayer indicates  
1426 that he overpaid taxes to the agency and requests a refund of the





1427 overpayment and/or a credit against current or future taxes for  
1428 the overpayment.

1429 (t) "Resident," when used to describe a taxpayer or  
1430 petitioner, means a natural person whose residence and place of  
1431 abode is within the State of Mississippi.

1432 (u) "Tag" means a type of license tag, plate or  
1433 registration card for a motor vehicle or trailer that the agency  
1434 is authorized under the Mississippi Motor Vehicle Privilege Tax  
1435 Law, Section 27-19-1 et seq., or under the Motor Vehicle Dealer  
1436 Tag Permit Law, Section 27-19-301 et seq., to issue or approve  
1437 before issuance, but does not include other types of license tags  
1438 or plates issued by the county tax collectors except for  
1439 personalized license tags and only to the extent that the agency  
1440 determines under Section 27-19-48 that a personalized license tag  
1441 applied for is considered obscene, slandering, insulting or vulgar  
1442 in ordinary usage or demands the surrender or orders the seizure  
1443 of the tag where issued in error.

1444 (v) "Tag holder" means the person in whose name a tag  
1445 is registered or the person applying for a tag.

1446 (w) "Tag penalty" means the penalties imposed under  
1447 Sections 27-19-63 and 27-51-43 for any delinquency in the payment  
1448 of motor vehicle privilege tax and ad valorem tax on a motor  
1449 vehicle which can be waived by the agency for good reason shown.  
1450 Pursuant to Section 27-51-103, imposition of this ad valorem tag  
1451 penalty at the maximum rate of twenty-five percent (25%) also



1452 results in ineligibility for the credit against motor vehicle ad  
1453 valorem taxes provided by that statute. Waiver of the twenty-five  
1454 percent (25%) delinquency penalty by the agency under Section  
1455 27-51-43 shall reinstate credit eligibility.

1456 (x) "Tax" means a tax, fee, penalty and/or interest  
1457 which the agency is required by either general law or by local and  
1458 private law to administer, assess and collect.

1459 (y) "Taxpayer" means a person who is liable for or paid  
1460 any tax to the agency.

1461 (z) "Title" means a title to a motor vehicle or  
1462 manufactured housing issued by the agency under the Mississippi  
1463 Motor Vehicle Title Law, Section 63-21-1 et seq.

1464 (aa) "Title interest holder" shall mean the owner or  
1465 lienholder in a motor vehicle or manufactured housing as indicated  
1466 on a title issued by the agency or as indicated on an application  
1467 to the agency for the issuance of a title.

1468 **SECTION 16.** Section 27-77-5, Mississippi Code of 1972, is  
1469 amended as follows:

1470 27-77-5. (1) Any taxpayer aggrieved by an assessment of tax  
1471 by the agency, by the agency's denial of a refund claim, \* \* \* by  
1472 the denial of a waiver of tag penalty, or the denial of a claim to  
1473 tax credits or incentives, and who wishes to contest the action of  
1474 the agency shall, within sixty (60) days from the date the agency  
1475 mailed or delivered written notice of the action, file an appeal  
1476 in writing with the Board of Review requesting a hearing and



1477 correction of the contested action specifying in detail the relief  
1478 requested and any other information that might be required by  
1479 regulation. Even after an appeal is filed with the Board of  
1480 Review, the agency retains the authority to change the assessment,  
1481 the denial of refund claim or the denial of tag penalty being  
1482 appealed.

1483 (2) Upon receipt of a timely written appeal from a tax  
1484 assessment, refund claim denial \* \* \*, denial of waiver of a tag  
1485 penalty, or the denial of a claim to tax credits or incentives, a  
1486 hearing shall be scheduled before the Board of Review unless it is  
1487 determined that the relief requested in the written appeal should  
1488 be granted without a hearing. A notice of the hearing shall be  
1489 mailed to the taxpayer advising the taxpayer of the date, time and  
1490 location of the hearing. The taxpayer or his designated  
1491 representative shall attend the hearing unless a request is made  
1492 to, and granted by, the Board of Review to allow the taxpayer to  
1493 submit his position in writing or by electronic transmission in  
1494 lieu of attendance. Failure of the taxpayer or his designated  
1495 representative to attend a hearing or to submit his position in  
1496 writing or by electronic transmission by the date specified by the  
1497 Board of Review or by the hearing date, if no date was specified,  
1498 shall constitute a withdrawal of the appeal.

1499 (3) At a hearing before the Board of Review on a tax  
1500 assessment, denial of refund claim \* \* \*, denial of waiver of a  
1501 tag penalty, or the denial of a claim to tax credits or



1502 incentives, the Board of Review shall try the issues presented,  
1503 according to law and the facts and within the guidelines  
1504 established by regulation. The hearing before the Board of Review  
1505 shall be informal and no official transcript will be made of the  
1506 hearing. At the earliest practical date after the hearing, the  
1507 members of the Board of Review that heard the appeal shall make a  
1508 determination on the matter presented and notify the taxpayer of  
1509 its findings by mailing a copy of its order to the taxpayer. If  
1510 the order involves the appeal of a denial of a waiver of tag  
1511 penalty, a copy of the order shall also be mailed to the tax  
1512 collector that imposed the penalty. If in the order the Board of  
1513 Review orders the taxpayer to pay a tax assessment, the taxpayer  
1514 shall, within sixty (60) days from the date the Board of Review  
1515 mailed \* \* \* the order, pay the amount ordered to be paid or  
1516 appeal the order of the Board of Review to the Board of Tax  
1517 Appeals. After the sixty-day period, if an appeal is not filed by  
1518 the taxpayer with the Executive Director of the Board of Tax  
1519 Appeals and the tax determined by the Board of Review is not paid,  
1520 the agency shall proceed to collect the tax assessment as  
1521 determined by the Board of Review.

1522 (4) Any taxpayer aggrieved by an order of the Board of  
1523 Review affirming a tax assessment, the denial of a refund  
1524 claim \* \* \*, the denial of a waiver of tag penalty, or the denial  
1525 of a claim to tax credits or incentives, and who wishes to contest  
1526 the order shall, within sixty (60) days from the date the Board of



1527 Review mailed \* \* \* the order \* \* \* being contested, file an  
1528 appeal to the Board of Tax Appeals. The appeal shall be in  
1529 writing and shall request a hearing and reversal or modification  
1530 of the order of the Board of Review, specify in detail the relief  
1531 requested and contain any other information that might be required  
1532 by regulation, and be filed with the executive director. At the  
1533 time of filing his appeal with the executive director, the  
1534 taxpayer shall also file a copy of his written appeal with the  
1535 Board of Review. Even after an appeal is filed with the Executive  
1536 Director of the Board of Tax Appeals, the Board of Review retains  
1537 the authority to amend and/or correct the order being appealed at  
1538 any time prior to a decision by the Board of Tax Appeals on the  
1539 appeal. Failure to timely file a written appeal with the  
1540 executive director within the sixty-day period shall make the  
1541 order of the Board of Review final and not subject to further  
1542 review by the Board of Tax Appeals or a court, other than as to  
1543 the issue of whether a written appeal from the order of the Board  
1544 of Review was timely filed with the executive director. If the  
1545 Board of Review shall not issue an order within six (6) months of  
1546 a hearing, the taxpayer may treat the failure to issue an order as  
1547 a denial of the relief requested in the hearing and appeal such  
1548 deemed denial to the Board of Tax Appeals as provided in this  
1549 section. A taxpayer's filing or failure to file an appeal based  
1550 on this deemed denial shall not prejudice or otherwise jeopardize  
1551 the taxpayer's right to file an appeal with the Board of Tax



1552 Appeals upon the Board of Review's issuance of a subsequent order  
1553 in the manner provided for in this section.

1554 (5) Upon receipt of a written appeal from an order of the  
1555 Board of Review affirming a tax assessment, refund claim  
1556 denial \* \* \*, denial of waiver of a tag penalty, or the denial of  
1557 a claim to tax credits or incentives, the executive director shall  
1558 schedule a hearing before the Board of Tax Appeals on the appeal.  
1559 A notice of this hearing shall be mailed to the taxpayer and the  
1560 agency advising them of the date, time and location of hearing.  
1561 The taxpayer or his designated representative shall attend the  
1562 hearing unless a request is made to and granted by the Executive  
1563 Director of the Board of Tax Appeals to allow the taxpayer to  
1564 submit his position in writing or by electronic transmission in  
1565 lieu of attendance. Failure of the taxpayer or his designated  
1566 representative to attend a hearing or to submit his position in  
1567 writing or by electronic transmission by the date specified by the  
1568 executive director or by the hearing date, if no date was  
1569 specified, shall constitute a withdrawal of the appeal.

1570 (6) (a) At any hearing before the Board of Tax Appeals on  
1571 an appeal of an order of the Board of Review affirming a tax  
1572 assessment, refund claim denial \* \* \*, denial of waiver of a tag  
1573 penalty, or the denial of a claim to tax credits or incentives,  
1574 two (2) members of the Board of Tax Appeals shall constitute a  
1575 quorum. At the hearing, the Board of Tax Appeals shall \* \* \*  
1576 conduct a hearing on all factual and legal issues raised by the



1577 taxpayer which address the substantive or procedural propriety of  
1578 the actions of the Department of Revenue being appealed, according  
1579 to the law and the facts and pursuant to any procedural guidelines  
1580 established by regulation.

1581 (b) At a hearing of any action brought under this  
1582 section, the Board of Tax Appeals shall give no deference to the  
1583 decision of the Board of Review, but shall give deference to the  
1584 department's interpretation and application of the statutes as  
1585 reflected in duly enacted regulations and other officially adopted  
1586 publications. The Board of Tax Appeals shall conduct a hearing on  
1587 all factual and legal issues raised by the taxpayer which address  
1588 the substantive or procedural propriety of the actions being  
1589 appealed. The Board of Tax Appeals shall decide all factual and  
1590 legal questions presented, including those as to legality and the  
1591 amount of tax or refund due as well as whether and to what extent  
1592 the imposition of interest and/or penalties is warranted under the  
1593 facts of the case, and if it finds that the tax assessment, denial  
1594 of refund claim or other action of the agency in issue is  
1595 incorrect or invalid, in whole or in part, it shall determine the  
1596 amount of tax or refund due, including interest and, if  
1597 applicable, penalty to date, and enter such order or judgment as  
1598 it deems proper. Interest and penalty included in this  
1599 determination shall be computed by the Board of Tax Appeals based  
1600 on the methods for computing penalty and interest as specified by  
1601 law for the type of tax in issue, and the Board of Tax Appeals



1602 shall have the same discretion as the commissioner in determining  
1603 whether and to what extent such amounts are warranted under the  
1604 facts of the case. The rules of evidence shall be relaxed at the  
1605 hearing.

1606 (c) Any appeal to chancery court from an order of the  
1607 Board of Tax Appeals resulting from this type of hearing shall  
1608 include a full evidentiary judicial hearing on \* \* \* all factual  
1609 and legal issues raised by the taxpayer which address the  
1610 substantive or procedural propriety of the department's action  
1611 being appealed. No official transcript shall be made of this  
1612 hearing before the Board of Tax Appeals.

1613 (d) After reaching a decision on the issues presented,  
1614 the Board of Tax Appeals shall enter its order setting forth its  
1615 findings and decision on the appeal. A copy of the order of the  
1616 Board of Tax Appeals shall be mailed to the taxpayer and the  
1617 agency. If the order involves an appeal of a denial of a waiver  
1618 of tag penalty, a copy of the order shall also be mailed to the  
1619 tax collector that imposed the penalty.

1620 (e) If the Board of Tax Appeals shall not issue an  
1621 order within nine (9) months of a hearing, the taxpayer may treat  
1622 the failure to issue an order as a denial of the relief requested  
1623 in the hearing and appeal such deemed denial to the chancery court  
1624 as provided in Section 27-77-7. A taxpayer's filing or failure to  
1625 file an appeal based on this deemed denial shall not prejudice or  
1626 otherwise jeopardize the taxpayer's right to file an appeal with





1627 the chancery court upon the Board of Tax Appeals' issuance of a  
1628 subsequent order in the manner provided for in Section 27-77-7.

1629 (7) If in its order the Board of Tax Appeals orders a  
1630 taxpayer to pay a tax assessment, the taxpayer shall, within sixty  
1631 (60) days from the date the Board of Tax Appeals mailed \* \* \* the  
1632 order, pay the amount ordered to be paid or properly appeal the  
1633 order of the Board of Tax Appeals to chancery court as provided in  
1634 Section 27-77-7. After the sixty-day period, if the tax  
1635 determined by the Board of Tax Appeals to be due is not paid and  
1636 an appeal from the Board of Tax Appeals order has not been  
1637 properly filed, the agency shall proceed to collect the tax  
1638 assessment as affirmed by the Board of Tax Appeals. If in its  
1639 order the Board of Tax Appeals determines that the taxpayer has  
1640 overpaid his taxes and an appeal from the Board of Tax Appeals  
1641 order has not been properly filed in chancery court, the agency  
1642 shall, within sixty (60) days from the date the Board of Tax  
1643 Appeals mailed its order, refund or credit to the taxpayer, as  
1644 provided by law, the amount of overpayment as determined and set  
1645 out in the order.

1646 (8) At any time after the filing of an appeal to the Board  
1647 of Review or from the Board of Review to the Board of Tax Appeals  
1648 under this section, an appeal can be withdrawn. Such a withdrawal  
1649 of an appeal may be made voluntarily by the taxpayer or may occur  
1650 involuntarily as a result of the taxpayer failing to appear at a  
1651 scheduled hearing, failing to make a written submission or



1652 electronic transmission in lieu of attendance at a hearing by the  
1653 date specified or by the hearing date, if no date was specified,  
1654 or by any other act or failure that the Board of Review or the  
1655 Board of Tax Appeals determines represents a failure on the part  
1656 of the taxpayer to prosecute his appeal. Any voluntary withdrawal  
1657 shall be in writing or by electronic transmission and sent by the  
1658 taxpayer or his designated representative to the chairman of the  
1659 Board of Review, if the appeal being withdrawn is to the Board of  
1660 Review, or to the executive director, if the appeal being  
1661 withdrawn is to the Board of Tax Appeals. If the withdrawal of  
1662 appeal is involuntary, the administrative appeal body from whom  
1663 the appeal is being withdrawn shall note on its minutes the  
1664 involuntary withdrawal of the appeal and the basis for the  
1665 withdrawal. Once an appeal is withdrawn, whether voluntary or  
1666 involuntary, the action from which the appeal was taken, whether a  
1667 tax assessment, a denial of refund claim, a denial of waiver of  
1668 tax penalty, or the denial of a claim to tax credits or  
1669 incentives, or an order of the Board of Review, shall become final  
1670 and not subject to further review by the Board of Review, the  
1671 Board of Tax Appeals or a court, other than as to the issue of  
1672 whether a taxpayer's actions or inactions constituted a failure on  
1673 the part of the taxpayer to prosecute his appeal. The agency  
1674 shall then proceed in accordance with law based on such final  
1675 action.



1676 (9) Nothing in this section shall bar a taxpayer from timely  
1677 applying to the commissioner as otherwise provided by law for a  
1678 tax refund or for a revision in tax.

1679 (10) Any appeal or other filing with the Board of Review or  
1680 Board of Tax Appeals pursuant to this section shall be considered  
1681 timely if it is hand delivered during the regular office hours of  
1682 the recipient by the due date of such filing, or if it is mailed,  
1683 postmarked or shipped by such due date. Any appeal or other  
1684 filing to the Board of Review or Board of Tax Appeals pursuant to  
1685 this section shall also be considered timely if electronically  
1686 transmitted via electronic mail, electronic filing or facsimile by  
1687 midnight of the due date for such filing. The timeliness of such  
1688 electronic filing shall be determined in all instances based on  
1689 the local time zone of the recipient. If the due date for any  
1690 appeal or other filing with the Board of Review or Board of Tax  
1691 Appeals should fall on a Saturday, Sunday, official state holiday,  
1692 or other day on which the Department of Revenue or Board of Tax  
1693 Appeals is closed, the due date for the filing shall be the next  
1694 business day in which the Department of Revenue or Board of Tax  
1695 Appeals is open.

1696 **SECTION 17.** Section 27-77-7, Mississippi Code of 1972, is  
1697 amended as follows:

1698 27-77-7. (1) The findings and order of the Board of Tax  
1699 Appeals entered under Section 27-77-5 shall be final unless the  
1700 agency or the taxpayer shall, within sixty (60) days from the date



1701 the Board of Tax Appeals mailed \* \* \* the order, file a petition  
1702 in the chancery court appealing the order. If the petition under  
1703 this subsection is filed by the taxpayer, the petition shall be  
1704 filed against the Department of Revenue as respondent. If the  
1705 petition under this subsection is filed by the agency, the  
1706 petition shall be filed against the taxpayer as respondent. The  
1707 petition shall contain a concise statement of the facts as  
1708 contended by the petitioner, identify the order from which the  
1709 appeal is being taken and set out the type of relief sought. If  
1710 in the action, the taxpayer is seeking a refund or credit for an  
1711 alleged overpayment of any tax \* \* \* other than individual or  
1712 corporate income tax or franchise tax, the taxpayer shall allege  
1713 in the petition or in his answer, where the appeal is filed by the  
1714 agency, that he alone bore the burden of the tax sought to be  
1715 refunded or credited and did not directly or indirectly collect  
1716 the tax from anyone else; however, this requirement shall not  
1717 apply in any case involving a claim for incentives based on  
1718 payroll withholding or other incentives, rebates or other economic  
1719 benefits the computation of which is based, in whole or in part,  
1720 upon taxes withheld or paid. The respondent to the petition has  
1721 thirty (30) days from the date of service of the petition to file  
1722 a cross-appeal.

1723 (2) A petition under subsection (1) of this section shall be  
1724 filed in the chancery court of the county or judicial district in  
1725 which the taxpayer has a place of business or in the Chancery



1726 Court of the First Judicial District of Hinds County, Mississippi;  
1727 however, a resident taxpayer may file the petition in the chancery  
1728 court of the county or judicial district in which he is a  
1729 resident. If both the agency and the taxpayer file a petition  
1730 under subsection (1) of this section, the appeals shall be  
1731 consolidated and the chancery court where the taxpayer filed his  
1732 petition shall have jurisdiction over the consolidated appeal.

1733 (3) \* \* \* Unless otherwise ordered by the chancery court  
1734 upon motion by the agency, no taxpayer appealing an order of the  
1735 Board of Tax Appeals under this section shall be required to post  
1736 security or a bond, or otherwise pay to the agency, under protest  
1737 or otherwise, any contested taxes, interest, penalties or other  
1738 amounts. After a petition or cross-appeal is filed by a taxpayer  
1739 under this section, if the agency believes that its ability to  
1740 obtain payment from the taxpayer of the taxes, penalties and  
1741 interest in issue is jeopardized by its inability to proceed with  
1742 collection due to the filing of the appeal or cross-appeal by the  
1743 taxpayer or if the agency believes that the appeal or cross-appeal  
1744 is being brought to delay payment of the taxes, penalties or  
1745 interest in issue, the agency may move the chancery court to  
1746 require the taxpayer to post a bond or other adequate security for  
1747 the payment of any judgment of the court. Upon consideration of  
1748 such motion, after notice and hearing, the chancellor shall  
1749 determine whether a bond or other security is needed to protect  
1750 the interest of the state in regard to the timely payment of the



1751 taxes, penalties and interest in issue. If the chancellor  
1752 determines that a bond or other security is necessary to protect  
1753 the interest of the state, the chancellor shall provide the  
1754 taxpayer sixty (60) days from the date that he enters an order on  
1755 the motion to post with the clerk of the court the bond or other  
1756 security that the chancellor determines is needed to protect the  
1757 state's interest. To avoid the accruing of additional penalty and  
1758 interest while an appeal is pending, a taxpayer appealing an order  
1759 of the Board of Tax Appeals affirming a tax assessment may, prior  
1760 to the filing of the petition, pay to the agency, under protest,  
1761 the amount ordered by the Board of Tax Appeals to be paid and seek  
1762 a refund of such taxes, plus interest thereon, in the appeal. The  
1763 taxpayer shall pay to the agency any tax included in the  
1764 assessment which he is not contesting. If the petition initiating  
1765 the appeal is filed by the taxpayer, the payment of the  
1766 uncontested tax shall be made prior to the expiration of the  
1767 sixty-day time period for filing a petition under subsection (1)  
1768 of this section or the commissioner may institute collection  
1769 proceedings for such uncontested amount. If the petition  
1770 initiating the appeal is filed by the agency, the payment of the  
1771 uncontested tax shall be made prior to the expiration of the  
1772 sixty-day time period for the filing of the petition. Failure of  
1773 the taxpayer to timely pay the uncontested tax shall not bar the  
1774 taxpayer from obtaining a reduction, abatement and/or refund of  
1775 any contested tax in the appeal and shall not result in the



1776 taxpayer's appeal or cross-appeal being dismissed \* \* \* or delayed  
1777 or judgment being entered granting the agency the relief it  
1778 requested.

1779 (4) In an action under this section resulting from an order  
1780 of the Board of Tax Appeals involving a refund claim denial, the  
1781 agency shall refund or credit to the taxpayer, as provided by law,  
1782 the amount of any overpayment included in the refund claim which  
1783 the agency does not contest. If the petition initiating the  
1784 appeal is filed by the agency, the uncontested overpayment shall  
1785 be paid or credited to the taxpayer prior to the expiration of the  
1786 sixty-day time period for filing a petition under subsection (1)  
1787 of this section. If the petition initiating the appeal is filed  
1788 by the taxpayer, such uncontested overpayment shall be paid or  
1789 credited to the taxpayer prior to the expiration of the thirty-day  
1790 time period for the filing of an answer or other response to the  
1791 petition as provided in subsection (5) of this section. Failure  
1792 of the agency to timely pay or credit the uncontested overpayment  
1793 to the taxpayer shall bar the agency from obtaining an  
1794 affirmation, in whole or in part, of the refund claim denial in  
1795 issue \* \* \* until the payment or claim is made, but shall not  
1796 result in the agency's appeal or cross-appeal being  
1797 dismissed \* \* \* or judgment being entered granting the taxpayer  
1798 the relief he requested \* \* \*.

1799 (5) Upon the filing of the petition under subsection (1) of  
1800 this section, the clerk of the court shall issue a summons to the



1801 respondent requiring the respondent to answer or otherwise respond  
1802 to the petition within thirty (30) days of service. Where the  
1803 agency is the respondent, the summons shall be served on the  
1804 agency by personal service on the commissioner as the chief  
1805 executive officer of the agency. The chancery court in which a  
1806 petition under subsection (1) of this section is properly filed  
1807 shall have jurisdiction to hear and determine the cause or issues  
1808 joined as in other cases. In any petition, cross-appeal or answer  
1809 in which the taxpayer is seeking a refund or credit for an alleged  
1810 overpayment of any tax \* \* \* other than individual or corporate  
1811 income tax or franchise tax the taxpayer shall prove by a  
1812 preponderance of the evidence that he alone bore the burden of the  
1813 tax sought to be refunded or credited and did not directly or  
1814 indirectly collect the tax from anyone else; however, this  
1815 requirement shall not apply in any case involving a claim for  
1816 incentives based on withholding taxes or other incentives, rebates  
1817 or other economic benefits the computation of which is based, in  
1818 whole or in part, upon taxes withheld or paid. At trial of any  
1819 action brought under this section, the chancery court shall give  
1820 no deference to the decision \* \* \* of the Board of Tax Appeals,  
1821 the Board of Review or the Department of Revenue, but shall give  
1822 deference to the department's interpretation and application of  
1823 the statutes as reflected in duly enacted regulations and other  
1824 officially adopted publications. The chancery court shall try the  
1825 case de novo and conduct a full evidentiary judicial hearing





1826 on \* \* \* all factual and legal issues raised by the taxpayer which  
1827 address the substantive or procedural propriety of the actions of  
1828 the Department of Revenue being appealed. The chancery court is  
1829 expressly prohibited from trying any action filed pursuant to this  
1830 section using the more limited standard of review specified for  
1831 appeals in Section 27-77-13 of this chapter. Based on the  
1832 evidence presented at trial, the chancery court shall determine  
1833 whether the party bringing the appeal has proven by a  
1834 preponderance of the evidence or a higher standard if required by  
1835 the issues raised, that he is entitled to any or all of the relief  
1836 he has requested. The chancery court shall decide all factual and  
1837 legal questions presented, including those as to legality and the  
1838 amount of tax, \* \* \* refund, tax credit or tax incentive due as  
1839 well as whether and to what extent the imposition of interest  
1840 and/or penalties are warranted under the facts of the case, and if  
1841 it finds that the tax assessment \* \* \*, denial of \* \* \* the claim  
1842 for a tax refund, tax credit or tax incentive or other action of  
1843 the agency in issue is incorrect or invalid, in whole or in part,  
1844 it shall determine the amount of tax or refund due, including  
1845 interest and, if applicable, penalty to date, and enter such order  
1846 or judgment as it deems proper. Interest and penalty included in  
1847 this determination shall be computed by the court based on the  
1848 methods for computing penalty and interest as specified by law for  
1849 the type of tax in issue, and the court shall have the same  
1850 discretion as the commissioner in determining whether and to what



1851 extent such amounts are warranted under the facts of the case.  
1852 When the chancery court determines that an overpayment exists, the  
1853 determination as to whether such overpayment shall be refunded to  
1854 the taxpayer or credited against the taxpayer's future taxes shall  
1855 be made by the chancery court based on the method for handling  
1856 overpayments as specified by the law for the type of tax in issue.  
1857 Either the agency or the taxpayer, or both, shall have the right  
1858 to appeal from the order of the chancery court to the Supreme  
1859 Court as in other cases. If an appeal is taken from the order of  
1860 the chancery court, any bond or other security required to be  
1861 posted by order of the chancery court shall continue to remain in  
1862 place until a final decision is rendered in the case.

1863         **SECTION 18.** Except for the reductions in the rate of  
1864 interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which  
1865 also contain the effective date of such rate of interest changes,  
1866 nothing in Sections 1 through 14 of this act shall affect or  
1867 defeat any refund claim, assessment, appeal, suit, right or cause  
1868 of action for taxes due or accrued under the laws of this state  
1869 before the date on which this act becomes effective, whether such  
1870 refund claims, assessments, appeals, suits or actions have been  
1871 begun or filed before the date on which this act becomes effective  
1872 or are begun or filed thereafter; and the statutes contained in  
1873 these sections as in effect prior to the effective date of this  
1874 act are expressly continued in full force, effect and operation  
1875 for the purpose of any refund claim, assessment, appeal, suit,



1876 right or cause of action for taxes paid, due or accrued under the  
1877 laws of this state before the date on which this act goes into  
1878 effect, for the collection and enrollment of liens for any taxes  
1879 due or accrued before the date on which this act goes into effect  
1880 and for the execution of any warrant under such laws before the  
1881 date on which this act becomes effective, and for the imposition  
1882 of any penalties, forfeitures or claims for failure to comply with  
1883 such laws prior to the date on which this act becomes effective.

1884       **SECTION 19.** Nothing in Sections 15, 16 or 17 of this act  
1885 shall affect or defeat any assessment, refund claim, request for  
1886 waiver of a tax penalty or claim for tax credits or incentives or  
1887 the administrative appeal or judicial appeal thereof where the  
1888 initial date of said assessment, refund claim, tag penalty, claim  
1889 for tax credits or incentives is before the date on which this act  
1890 becomes effective. The provisions of the laws relating to the  
1891 administrative appeal or judicial review of such actions which  
1892 were in effect prior to the effective date of this act are  
1893 expressly continued in full force, effect and operation for the  
1894 purpose of providing an administrative appeal and/or judicial  
1895 review of any assessment, refund claim, request for waiver of a  
1896 tag penalty or claim for tax credits or incentives where the  
1897 initial date of said assessment, refund claim, tag penalty, claim  
1898 for tax credits or incentives is before the date on which this act  
1899 becomes effective.



1900           **SECTION 20.** This act shall take effect and be in force from  
1901 and after January 1, 2015.

