

HOUSE BILL NO. 799

AN ACT TO AMEND SECTIONS 27-7-23 AND 27-7-24, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE USE OF CERTAIN ALTERNATIVE METHODS TO APPORTION, FOR INCOME TAX PURPOSES, THE INCOME OF CORPORATIONS OR ORGANIZATIONS HAVING BUSINESS INCOME FROM ACTIVITY THAT IS TAXABLE WITHIN AND WITHOUT THIS STATE; TO PROVIDE THAT IN CASES INVOLVING SUCH CORPORATIONS AND ORGANIZATIONS AND IN CASES INVOLVING FINANCIAL INSTITUTIONS, THE PARTY REQUESTING OR REQUIRING THE ALTERNATIVE METHOD SHALL BEAR THE BURDEN OF PROVING BY PREPONDERANCE OF THE EVIDENCE IN ANY ADMINISTRATIVE OR JUDICIAL PROCEEDING THAT THE STANDARD METHODS OF APPORTIONMENT DO NOT FAIRLY REPRESENT THE TAXPAYER'S ACTIVITY; TO AMEND SECTIONS 27-7-37, 27-7-51, 27-7-53, 27-7-315, 25-7-327 AND 27-7-345, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE COMMISSIONER OF REVENUE MAY NOT REQUIRE A CORPORATION THAT IS AFFILIATED WITH ONE OR MORE CORPORATIONS THAT ARE NOT TAXABLE UNDER THE INCOME TAX LAW TO FILE A COMBINED RETURN UNTIL REGULATIONS HAVE BEEN ENACTED SPECIFYING THE CRITERIA AND CIRCUMSTANCES THAT FORM THE BASIS FOR MEETING THE PREPONDERANCE OF THE EVIDENCE STANDARD REQUIRED TO SUPPORT A CONCLUSION THAT INTERCOMPANY TRANSACTIONS OF SUCH CORPORATION HAVE RESULTED IN THE IMPROPER SHIFTING OF TAXABLE INCOME FROM A TAXPAYER TO ANOTHER MEMBER OR MEMBERS OF ITS AFFILIATED GROUP NOT SUBJECT TO TAX UNDER THE INCOME TAX LAW, OR THAT THE INTERCOMPANY TRANSACTIONS OF SUCH CORPORATIONS HAVE RESULTED IN THE IMPROPER SHIFTING OF TAXABLE INCOME BETWEEN MEMBERS OF THE INCLUDED AFFILIATED GROUP; TO PROHIBIT THE COMMISSIONER OF REVENUE FROM ASSESSING CERTAIN PENALTIES ARISING FROM REQUIRING A COMBINED RETURN EXCEPT UPON PREPONDERANCE OF THE EVIDENCE THAT THE TAXPAYER'S METHOD WAS WITHOUT REASONABLE BASIS OR THE INTERCOMPANY TRANSACTIONS AT ISSUE LACKED ANY MATERIAL NON-TAX BUSINESS PURPOSE; TO PROVIDE THAT THE PERIOD OF TIME TO

RESPOND TO CERTAIN NOTICES TO TAXPAYERS UNDER THE INCOME TAX LAW SHALL BEGIN FROM THE DATE OF MAILING OR HAND DELIVERING THE NOTICE; TO REDUCE CERTAIN INTEREST PENALTIES THAT MAY BE IMPOSED BY THE COMMISSIONER OF REVENUE UNDER THE INCOME TAX LAW FROM 1% TO 1/2 OF 1% PER MONTH; TO MAKE THE IMPOSITION OF SUCH PENALTIES DISCRETIONARY; TO APPLY CERTAIN PENALTIES TO THE TAX DEFICIENCY OR DELINQUENCY RATHER THAN THE AMOUNT OF THE TAX; TO PROVIDE THAT A TAXPAYER'S FAILURE TO FILE AN APPEAL FOR DENIAL OR REFUND OF OVERPAYMENT BASED ON THE FAILURE OF THE OVERPAYMENT TO BE PAID THE TAXPAYER WITHIN SIX MONTHS, DOES NOT PREJUDICE THE TAXPAYER'S RIGHT TO FILE AN APPEAL UPON A SUBSEQUENT FORMAL DENIAL; TO AMEND SECTION 27-13-23 AND 27-13-25, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE PERIOD OF TIME TO RESPOND TO CERTAIN NOTICES TO TAXPAYERS UNDER THE FRANCHISE TAX LAW SHALL BEGIN FROM THE DATE OF MAILING OR HAND DELIVERING THE NOTICE; TO REDUCE CERTAIN INTEREST PENALTIES THAT MAY BE IMPOSED BY THE COMMISSIONER OF REVENUE UNDER THE FRANCHISE TAX LAW FROM 1% TO 1/2% OF 1% PER MONTH; TO MAKE THE IMPOSITION OF SUCH PENALTIES DISCRETIONARY; TO APPLY CERTAIN PENALTIES TO THE TAX DEFICIENCY OR DELINQUENCY RATHER THAN THE AMOUNT OF THE TAX; TO AMEND SECTIONS 27-65-31, 27-65-35, 27-65-37 AND 27-65-39, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FOR PURPOSES OF THE SALES TAX LAW, THERE SHALL BE A PRESUMPTION THAT A SELLER COLLECTED THE TAX FROM A CUSTOMER OR PURCHASER; TO PROVIDE THAT PENALTIES FOR FAILURE TO REMIT FUNDS COLLECTED BY A SELLER UNDER THE SALES TAX LAW SHALL NOT BE LEVIED UNLESS THE COMMISSIONER PROVES BY PREPONDERANCE OF THE EVIDENCE THAT THE TAXPAYER ACTUALLY COLLECTED THE FUNDS FROM THE PURCHASER AND KNOWINGLY AND INTENTIONALLY FAILED TO REMIT THEM; TO PROVIDE THAT THE PERIOD OF TIME TO RESPOND TO CERTAIN NOTICES TO TAXPAYERS UNDER THE SALES TAX LAW SHALL BEGIN FROM THE DATE OF MAILING OR HAND DELIVERING THE NOTICE; TO REDUCE CERTAIN INTEREST PENALTIES THAT MAY BE IMPOSED BY THE COMMISSIONER OF REVENUE UNDER THE SALES TAX LAW FROM 1% TO 1/2% OF 1% PER MONTH; TO MAKE THE IMPOSITION OF SUCH PENALTIES DISCRETIONARY; TO APPLY CERTAIN PENALTIES TO THE TAX DEFICIENCY OR DELINQUENCY RATHER THAN THE AMOUNT OF THE TAX; TO PROVIDE THAT IN REGARD TO THE PENALTY FOR DEFICIENT OR DELINQUENT SALES TAX THAT IS INTENTIONAL, A TAXPAYER'S PURPORTED DISREGARD OF INSTRUCTIONS GIVEN THROUGH AN AUDIT SHALL NOT BE A BASIS FOR THE IMPOSITION OF THE PENALTY; TO AMEND SECTIONS 27-77-1, 27-77-5 AND 27-77-7, MISSISSIPPI CODE OF 1972, TO REVISE THE MEANING OF "MAIL," "MAILED" OR "MAILING" UNDER THE LAWS GOVERNING THE BOARD OF TAX APPEALS; TO EXPAND THE ACTIONS THAT MAY BE APPEALED TO THE BOARD OF TAX APPEALS; TO PROVIDE THAT IF THE DEPARTMENT OF REVENUE'S BOARD OF REVIEW DOES NOT ISSUE AN ORDER WITHIN NINE MONTHS OF A HEARING, THE TAXPAYER MAY TREAT THE

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

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

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

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

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

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

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

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

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

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

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

(2) "Business income" means income of any type or class, and from any activity that meets the relationship described in the transactional test or the functional test described in this paragraph (2). The classification of income by occasionally used labels, including, but not limited to, manufacturing income, compensation for services, sales income interest, dividends, rents, royalties, gains, operating income, and nonoperating income shall not be considered when determining whether income is business or nonbusiness income. All income of the taxpayer is

business income unless clearly classifiable as nonbusiness income. A taxpayer seeking to overcome a classification of income as business income must establish by a preponderance of the evidence that the income has been incorrectly classified.

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

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

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

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

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

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

taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.

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

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

(v) If, with respect to an item of property, a taxpayer takes a deduction from business income that is apportioned to Mississippi, or includes that item of property in the property factor, it is presumed that the item of property is

or was integral to the taxpayer's trade or business operations. No presumption arises from the absence of any of this action.

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

Therefore, while treatment of income derived from transactions involving intangible property as business income may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, establishment of such a relationship is not the exclusive basis for concluding that the income constitutes business income. It is sufficient to support a finding of business income if the holding of the intangible property served an operational rather than an investment function.

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

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

(5) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any

territory or possession of the United States, and any foreign country or political subdivision thereof.

(b) Nonresident individuals, partnerships, trusts and estates.

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

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

(3) A taxable nonresident shall be allowed to deduct expenses, interest, taxes, losses, bad debts, depreciation and similar business expenses only to the extent that they are allowable under this article and are attributable to the production of income allocable to and taxable by the State of Mississippi. As to allowable deductions essentially personal in

nature, such as contributions to charitable organizations, medical expenses, taxes, interest and the optional standard deduction, such taxable nonresident shall be allowed deductions therefor in the ratio that the net income from sources within Mississippi bears to the total net income from all sources of such taxable nonresident, computed as if such taxable nonresident * * * was a resident of Mississippi.

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

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

(2) Allocation and apportionment of income.

(A) Except as provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 * * * 27-7-24.7 and 27-7-24.8, Mississippi Code of 1972, any corporation or organization having business income from business activity which is taxable both within and without this state shall allocate and apportion its net business income as prescribed by regulations enacted by the commissioner. If the business income of the corporation is

derived solely from property owned or business done in this state and the corporation is not taxable in another state, the entire business income shall be allocated to this state. A corporation is taxable in another state if, in that state the corporation is subject to a net income tax, or a franchise tax measured by net income, or if that state has jurisdiction to subject the corporation to a net income tax regardless of whether the state does or does not subject the corporation to a net income tax.

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

(i) Separate accounting;

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

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

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

(C) In any instance in which a taxpayer requests or the commissioner requires the use of any of the alternative

apportionment methods in subparagraph (B) of this paragraph, the party requesting or requiring the method shall bear the burden of proving by preponderance of the evidence in any administrative or judicial proceeding that the methods set forth in this section or the commissioner's regulations do not fairly represent the extent of the taxpayer's business activity in this state and that the proposed method more fairly represents that activity than any other reasonable method available. The alternative apportionment authority specified in this subparagraph (D) is intended to be invoked only in limited and unique, nonrecurring circumstances where the standard apportionment provisions contained in the statutes and regulations produce unanticipated results that do not fairly represent the extent of the taxpayer's business activity in this state.

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

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

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

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

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

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

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

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

(G) Patent and copyright royalties are allocable to the state in which the patent or copyright is utilized by the payer, or to this state if and to the extent that the patent or copyright is utilized by the payer in a state in which the

corporation is not taxable and the corporation's commercial domicile is in this state.

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

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

(d) **Foreign lenders.**

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

excluded from Mississippi gross income and exempt from the Mississippi income tax levy and the reporting requirements.

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

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

(f) **Bond requirements.** Any individual or corporation subject to the tax imposed by this article, engaged in the business of performing contracts which may require the payment of net income taxes, may be required by the commissioner, before entering into the performance of any contract or contracts the consideration of which is more than Ten Thousand Dollars

(\$10,000.00), to execute and file a good and valid bond with a surety company authorized to do business in this state, or with sufficient sureties to be approved by the commissioner, conditioned that all taxes which may accrue to the State of Mississippi will be paid when due. Provided, however, that such bond shall not exceed five percent (5%) of the total contracts entered into during the taxable period, and, provided further, that any taxpayer, in lieu of furnishing such bond, may pay the maximum sum required herein as advance payment of taxes due on the net income realized from any contract or contracts performed or completed in this state.

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

27-7-24. (1) Except as otherwise specifically provided, a financial institution whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and 27-7-24.7, Mississippi Code of 1972. All items of nonbusiness income (income which is not includable in the apportionable income tax base) shall be allocated pursuant to the provisions of Section 27-7-23, Mississippi Code of 1972. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States whose effectively connected income, as defined under the federal Internal Revenue Code, as in

effect January 1, 1996, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and 27-7-24.7, Mississippi Code of 1972.

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

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

(4) If the allocation and apportionment provisions of Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and 27-7-24.7 do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the

commissioner may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (a) Separate accounting;
- (b) The exclusion of any one or more of the factors;
- (c) The inclusion of one or more additional factors

which will fairly represent the taxpayer's business activity in this state; or

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

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

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

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

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

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

shall be added nonbusiness income of the combined members directly allocable to Mississippi to determine Mississippi taxable income.

(ii) The commissioner may require a corporation taxable under this article that is affiliated with one or more corporations that are not taxable under this article to file a combined return with the affiliated corporation or corporations if he * * * establishes by preponderance of the evidence that the intercompany transactions of such taxable corporation have resulted in the shifting of taxable income from itself to another member or members of its affiliated group not subject to tax under this article. Also, the commissioner may require a group of affiliated corporations taxable under this article to file a combined return if he * * * establishes by preponderance of the evidence that the intercompany transactions of such corporations have resulted in the shifting of taxable income between members of the included affiliated group. In the event that such a combined return is required, the net income or loss of each member of the group required to be combined, shall be combined pursuant to regulations prescribed by the commissioner to determine the total combined taxable income and the Mississippi taxable income of the group. The tax imposed by this article shall be computed and assessed upon the Mississippi taxable income of the combined group which shall be treated as the taxpayer.

(iii) The commissioner shall not require the filing of a combined return pursuant to the authority granted

under subparagraph (ii) of this paragraph until regulations shall have been enacted specifying the criteria and circumstances that form the basis for meeting the preponderance of the evidence standard required to support a conclusion that intercompany transactions of such taxable corporation have resulted in the improper shifting of taxable income from a taxpayer to another member or members of its affiliated group not subject to tax under this article, or that the intercompany transactions of such corporations have resulted in the improper shifting of taxable income between members of the included affiliated group.

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

(b) The privilege to file combined returns shall be limited to members of an affiliated group of corporations which are subject to taxation under the provisions of this article. The privilege of making a combined return may be exercised only if all corporations subject to taxation under this article which were members of the affiliated group at any time during the taxable year consent to a combined return prior to the last day prescribed by law for the filing of such return. The making of a combined

return shall be considered as such consent. In the case of a taxable corporation which is a member of the affiliated group for a fractional part of the year, the combined return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

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

(d) As used in this article, the term "affiliated group" means one or more corporations connected through stock ownership with a common parent corporation where at least eighty percent (80%) of the voting power of all classes of stock and at least eighty percent (80%) of each class of the nonvoting stock of each of the member corporations, except the common parent corporation, is owned directly by one or more of the other member corporations; and the common parent corporation owns directly stock possessing at least eighty percent (80%) of the voting power of all classes of stock and at least eighty percent (80%) of each class of the nonvoting stock of at least one (1) of the other

member corporations. As used in this subsection, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

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

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

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

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

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

27-7-51. (1) If, upon examination of a return made under the provisions of this article, it appears that the correct amount of tax is greater or less than that shown in the return, the tax shall be recomputed. Any overpayment of tax so determined shall be credited or refunded to the taxpayer. If the correct amount of tax is greater than that shown in the return of the taxpayer, the commissioner shall make his assessment of additional tax due by mail or by personal delivery of the assessment to the taxpayer, which assessment shall constitute notice and demand for payment. The taxpayer shall be given a period of sixty (60) days from the date * * * the commissioner mailed or hand delivered the notice in which to pay the additional tax due, including penalty and interest as hereinafter provided, and if the sum is not paid within the period of sixty (60) days, the commissioner shall proceed to collect it under the provisions of Sections 27-7-55 through 27-7-67, provided that within the period of sixty (60) days the taxpayer may appeal to the Board of Review as provided by law.

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

(3) In case of failure to pay any additional taxes as assessed under this section, there may be added to the additional amount assessed a penalty of one-half of one percent (1/2 of 1%) of the amount of the additional tax if the failure is for not more than one (1) month, with an additional one-half of one percent (1/2 of 1%) for each additional month or fraction thereof during which the failure continues, not to exceed twenty-five percent (25%) in the aggregate.

(4) Where the reported net income of a taxpayer is increased by the Internal Revenue Service, * * * and the taxpayer * * *, without action by the commissioner, amends a return filed under this article on the basis of a change in taxable income made by the Internal Revenue Service, and pays the additional tax due within thirty (30) days after agreeing to the federal change (and has received statement of the federal changes to which agreement has been made or payment thereof), * * * the commissioner may add interest to the additional tax at the rate of one percent (1%) per month, except as otherwise provided in subsection (6) of this section, from due date of the original return. If the additional tax, based on changes in taxable income by the Internal Revenue Service, is assessed by the commissioner under subsection (1) of this section, in addition to the interest there may be added a penalty of one-half of one percent (1/2 of 1%) of the additional tax due if the failure is for not more than one (1) month, with an additional one-half of one percent (1/2 of 1%) for each additional

month or fraction thereof during which the failure to pay continues, not to exceed twenty-five percent (25%) in the aggregate, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

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

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

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

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

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

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

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

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

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

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

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

27-7-67 of this article; provided that within the period of sixty (60) days the taxpayer may appeal to the Board of Review as provided by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Pay any installment due under the agreement;
2. Pay any other tax liability due under this chapter when the liability is due; or
3. Provide a statement of financial condition required by the commissioner.

(2) If no return is made by a taxpayer required by this chapter to make a return, the commissioner shall determine the taxpayer's liability from the best information available, which determination shall be prima facie correct for the purpose of this article, and the commissioner shall forthwith make an assessment of the tax so determined to be due by mail or by personal delivery of the assessment to the taxpayer, which assessment shall constitute notice and demand for payment. The taxpayer shall be given a period of sixty (60) days from the date * * * the commissioner mailed or hand delivered the notice in which to pay the tax due, including penalty and interest as hereinafter provided, and if the sum is not paid within the period of sixty (60) days, the commissioner shall proceed to collect it under the

provisions of Sections 27-7-55 through 27-7-67 of this article; provided that within the period of sixty (60) days the taxpayer may appeal to the Board of Review as provided by law.

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

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

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

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

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

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

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

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

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

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

27-7-315. (1) If any overpayment of any tax, interest or penalty levied or provided for by Article 1 of this chapter, or in this article, is not refunded to the taxpayer as provided in

Section 27-7-313 within six (6) months after the final date for filing returns as prescribed by law, the taxpayer may treat the failure to refund as a denial of a refund claim and appeal in the manner provided for in Section 27-77-5. A taxpayer's failure to file an appeal based on this deemed denial shall not prejudice or otherwise jeopardize the taxpayer's right to file an appeal upon a subsequent formal denial in the manner provided for in Section 27-77-5.

(2) If any overpayment of tax as reflected on a return * * *, amended return * * * or any other form of claim for refund or determined to be due by the commissioner * * * or department when no overpayment is shown on a return * * *, amended return or other form of claim for refund, is not refunded within ninety (90) days after (a) the prescribed due date of the return, (b) the date the return is filed, (c) the date a claim for refund is filed, or (d) the date the commissioner * * *, the Board of Tax Appeals or court determines a refund as being due when no overpayment is shown on a return * * *, amended return or other form of claim for refund, whichever is later, interest at the rate of one percent (1%) per month, except as otherwise provided in this section, shall be allowed on the overpayment computed for the period after expiration of the ninety-day period provided in this subsection to the date of payment. For any overpayment reflected on a return or amended return filed on or after January 1, 2015, or any overpayment based on a determination of refund by the

commissioner, the Board of Tax Appeals or court on or after January 1, 2015, where no overpayment is shown on a return or amended return, the rate of interest allowed on the overpayment shall be:

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

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

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

(d) Six-tenths of one percent (6/10 of 1%) per month for any overpayment reflected on a return or amended return filed on or after January 1, 2018, and before January 1, 2019, or any overpayment based on a determination of refund by the commissioner, the Board of Tax Appeals or court on or after January 1, 2018, and before January 1, 2019, where no overpayment is shown on a return or amended return;

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

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

27-7-327. Taxpayers subject to the requirements of estimated tax payments for an income year ending after December 31, 1983, shall estimate an amount not less than eighty percent (80%) of the tax actually due in the case of an individual or, except as otherwise provided in Section 27-7-329(f), an amount not less than ninety percent (90%) of the tax actually due in the case of a corporation. Any corporate taxpayer which either fails to file the required estimated tax returns and pay the tax within the time prescribed, or, except as otherwise provided in Section 27-7-329(f), which underestimates the required amount of the

estimated tax shall be liable for a penalty in the amount of ten percent (10%) of the amount unpaid plus interest at the rate of one percent (1%) per month on such amount, except as otherwise provided in this section. Any individual taxpayer who either fails to file the required estimated tax returns and pay the tax within the time prescribed, or who underestimates the required amount of the estimated tax shall be liable for interest at the rate of one percent (1%) per month on such amount, except as otherwise provided in this section. For taxes assessed by the commissioner on or after January 1, 2015, the rate of any interest assessed under this section shall be:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Review or the executive director has for the addressee in their file on the administrative appeal in which the document or item is being mailed to the addressee. The addressee is presumed to have received any document or item mailed to his official mailing address. The commissioner, by regulation, shall prescribe the procedure for establishing an official mailing address in the administrative appeal process for appeals before an administrative hearing officer or the Board of Review of the Department of Revenue and the procedure for changing that official mailing address. The Board of Tax Appeals, by regulation, shall prescribe the procedure for establishing an official mailing address in the administrative appeal process before that board and the procedure for changing that official mailing address. It is the responsibility of the addressee to make sure that his official mailing address is correct.

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

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

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

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

(ii) An IFTA license; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

representative to attend a hearing or to submit his position in writing or by electronic transmission by the date specified by the Board of Review or by the hearing date, if no date was specified, shall constitute a withdrawal of the appeal.

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

the agency shall proceed to collect the tax assessment as determined by the Board of Review.

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

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

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

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

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

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

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

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

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

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

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

(8) At any time after the filing of an appeal to the Board of Review or from the Board of Review to the Board of Tax Appeals under this section, an appeal can be withdrawn. Such a withdrawal of an appeal may be made voluntarily by the taxpayer or may occur involuntarily as a result of the taxpayer failing to appear at a scheduled hearing, failing to make a written submission or electronic transmission in lieu of attendance at a hearing by the date specified or by the hearing date, if no date was specified, or by any other act or failure that the Board of Review or the Board of Tax Appeals determines represents a failure on the part of the taxpayer to prosecute his appeal. Any voluntary withdrawal shall be in writing or by electronic transmission and sent by the taxpayer or his designated representative to the chairman of the Board of Review, if the appeal being withdrawn is to the Board of Review, or to the executive director, if the appeal being withdrawn is to the Board of Tax Appeals. If the withdrawal of appeal is involuntary, the administrative appeal body from whom the appeal is being withdrawn shall note on its minutes the involuntary withdrawal of the appeal and the basis for the withdrawal. Once an appeal is withdrawn, whether voluntary or involuntary, the action from which the appeal was taken, whether a tax assessment, a denial of refund claim, a denial of waiver of tax penalty, or the denial of a claim to tax credits or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PASSED BY THE HOUSE OF REPRESENTATIVES
April 1, 2014.



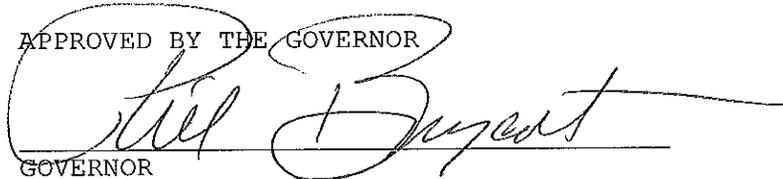
SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 1, 2014



PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR



GOVERNOR

4/10/14

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