

Title 35 Mississippi State Tax Commission

Part I Administrative

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Chapter 01 Administrative Practices and Procedures for the Mississippi State Tax Commission

- 100 Statutory Authority
This Regulation is promulgated pursuant to the authority and requirements of the Mississippi Administrative Procedures Law.
- 101 Applicability
This Regulation shall be applicable to all matters falling within the jurisdiction of the Commission and the Commissioner except to the extent a statute of the State of Mississippi provides otherwise. This Regulation is in addition to and supplements those statutory provisions which may be applicable.
- 102 General Purpose
The Agency regulates most tax matters in the State of Mississippi. The Mississippi State Tax Commission’s responsibilities also include the regulation of alcoholic beverages, property taxes, motor vehicle tag and titles, issuing permits and certain business registrations. The Commission and Commissioner interpret the statutes that they are charged to administer and enforce.
- 103 Definitions
When used in this Regulation:
1. "Agency" or "Mississippi State Tax Commission" means the various offices, bureaus, and divisions of the Mississippi State Tax Commission that incorporate the functional duties and responsibilities of the Commissioner as authorized by law.
2. "Commission" means the Chairman of the Mississippi State Tax Commission and the two Associate Commissioners of the Mississippi State Tax Commission.
3. "Commissioner" means the Chairman and Commissioner of Revenue of the Mississippi State Tax Commission.
4. "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 Review Board or Commission. "Denial" does not mean the act of returning or refusing to consider a claim, request for waiver, or application for permit, 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 and can not or will not be provided.

5. "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, tag or title or to the mailing of a denial of permit, 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, tag or title in issue. All other references to "last known address" mean the official mailing address that the hearing officer, the Review Board or the Commission Secretary 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. It is the responsibility of the addressee to make sure that his official mailing address is correct.

6. "Mail", "mailed" or "mailing" means placing the document or item referred to in First Class United States Mail, postage prepaid, 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 Review Board, or the Commission by a 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 First Class United States Mail, postage prepaid, to the last known address of that person's representative. Mailing to the representative of a taxpayer, permittee, tag holder or title interest holder shall constitute mailing and notice to the taxpayer, permittee, tag holder or title interest holder.

7. "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 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.

8. "Permittee" means a person holding a permit, applying for a permit or renewing a permit.

9. "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, tag holder, or title interest holder, or in the context of a person requesting guidance under Section 9 of this regulation.

10. "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.

11. "Representative" means an individual who represents a person in an administrative appeal before a hearing officer of the agency, before the Review Board, or before the Commission.

12. "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.

13. "Review Board" means the Board of Review as legally constituted and authorized by statute comprised of those qualified employees appointed by the Chairman of the State Tax Commission.

14. "Tag" means a type of license tag or plate for a motor vehicle or trailer that the agency is authorized under Mississippi Motor Vehicle Privilege Tax Law, Sections 27-19-1, et seq., or under the Motor Vehicle Dealer Tag Permit Law, Sections 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.

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

16. "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.

17. "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.

18. "Taxpayer" means any person or fiduciary liable for or having paid any tax to the Agency.

19. "Title interest holder" means 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.

104 Agency Organization

104.01 Functional Duties of the Agency

The Mississippi State Tax Commission is statutorily responsible for the majority of revenue collection activities for the State. The major *functional* areas of the Agency are identified as follows:

1. Taxation, including but not all inclusive, of the following tax types:
 - a. Individual Income
 - b. Corporate Income and Franchise
 - c. Withholding
 - d. Sales and Use
 - e. Petroleum
 - f. Real and Personal Property
 - g. Motor Vehicle Licensing
 - h. and other taxes.

2. Business licensing, registration, and permitting of certain businesses.
3. Motor Vehicle Tags and Titles including Interstate and Intrastate Trucking and Motor Vehicle Registration and Titles.
4. Alcoholic Beverages including permitting, liquor distribution, and law enforcement.
5. In addition to the collection of taxes, the Mississippi State Tax Commission determines and certifies to the State Treasurer the tax diversions to counties, municipalities, and such special funds as provided by law within the State of Mississippi.

104.02 Agency Organizational Structure

The following is the Agency organizational structure along with a brief description of the duties and responsibilities of each office:

1. Executive
 - a. Legal Division provides legal representation and advice to the Commission, Commissioner, and Agency employees. By and through its attorneys, the division represents the Commission in court cases and before various administrative bodies.
 - b. Human Resources is responsible for the Agency's personnel system, employee training, development and recognition programs, as well as employee policy development.
 - c. Communications and Internal Audit is responsible for coordination of communication activities, both internally and externally, and oversight in improving processes and functions through internal audit.
 - d. Board of Review hears appeals from persons and taxpayers that are aggrieved by certain actions of the Agency.
 - e. Commission Secretary acts as custodian of books, records and other documents of the Commission, prepares minutes of meetings and orders for matters heard by the Commission, responds to taxpayers and their representatives on tax related questions, assists the Commission in formulating policy, and performs other duties as assigned by the Chairman.
2. Office of Revenue is responsible for administering taxes imposed by the State of Mississippi, registration functions related to taxation, registration and licensing of certain businesses, issuance of motor vehicle titles, economic tax incentives, and issuance of forms.
 - a. Income and Franchise Tax Bureau is responsible for administering the Income and Franchise Tax laws of this state. Corporate Division administers Income and Franchise tax laws pertaining to corporations, partnerships, LLC's, and other legal entities. Individual Division administers fiduciary and individual Income Tax laws. Withholding Division administers Withholding Tax laws.
 - b. Sales and Use Tax Bureau is responsible for administering the Sales and Use tax laws as well as special county and city levies, Occupancy Tax, Motor Vehicle Rental tax, and the Waste Tire Fee. Contract Branch is responsible for handling issues related to Contractor's Tax on qualifiable construction projects. Post Audit is responsible for issuing late filing penalty notices and performing desk audits of tax returns.
 - c. Petroleum Tax Bureau administers tax laws relating to gasoline, special fuels, lubricating oil, compressed gas, natural gas, and the International Fuel Tax Agreement (IFTA).

- d. Miscellaneous Tax Bureau is responsible for the administration of various taxes, along with the issuance of licenses, and regulatory oversight for certain business activities including: Privilege Taxes (Insurance Premium, Gaming, Finance Company, and Statewide Privilege for Public Utilities), Excise taxes (Beer and Tobacco), Severance Taxes (Oil, Gas, Timber, and Salt), Estate Tax, Other taxes designated for special funds (Hazardous Waste, Non Hazardous Waste, Public Utility Regulatory, Municipal Gas Regulatory, Railroad Regulation, and E-911).
 - e. Motor Vehicle Licensing Bureau administers tax laws and fees imposed for use of roads and highways within the State of Mississippi, International Registration Plan for Mississippi-based interstate trucking firms, Motor Vehicle Registration, Motor Vehicle Dealer Registration, and Intrastate Trucking. Additionally, the bureau issues tags and tag decals to the eighty-two (82) counties.
 - f. Title Bureau administers the Mississippi Motor Vehicle Title Laws and issues certificates of title for motor vehicles and manufactured homes.
3. Office of Audit and Compliance is responsible for performing audits of businesses and individuals, directing compliance activities, collecting delinquent taxes, and assisting businesses in applying for required permits, licenses, and registrations.
- a. Criminal Investigations performs investigations of suspected criminal tax evasion.
 - b. Collections Bureau assists in the collection of delinquent taxes through the issuance of liens, levies, garnishments, and other process.
 - c. District Service Offices are located in Brookhaven, Columbus, Greenwood, Biloxi, Hattiesburg, Jackson, Meridian, Senatobia, and Tupelo. These offices provide customer service and are home to the Agency's auditors and revenue officers.
4. Office of Administrative Services is responsible for providing administrative and support services for the Mississippi State Tax Commission as well as accounting for the state's tax revenue.
- a. Accounting Bureau is responsible for administration of the Agency's budget and ensures that all taxes received by the Agency are properly receipted, deposited, recognized as revenue, disbursed, and reported.
 - b. Processing Bureau is responsible for the front-end processing of all tax returns and documents and ensures that all returns and payments received by the Agency are properly recorded and deposited.
 - c. Purchasing Division obtains goods and services and is also responsible for facilities maintenance and security at the Agency's main office.
 - d. Print Shop Division is responsible for the bulk of all printing requirements of the Agency (including tax forms). The division's mail operations handle the initial receipt of all-incoming mail for the Agency as well as distribution of interoffice mail for the main office. The warehouse is used for storage of forms, supplies, and records for the Agency.
5. Office of Information Technologies is responsible for maintaining computing systems within the Agency.
- a. Infrastructure and Support is responsible for providing and maintaining hardware and existing operating software to support the business operations of the Agency.
 - b. Systems Delivery is responsible for systems analysis, development, testing, and deployment of all new application systems in support of Agency's business operations.

6. Office of Alcoholic Beverage Control is responsible for licensing alcoholic beverage retailers, operating as wholesale distributor of alcoholic beverages, enforcement of Mississippi's Prohibition and Local Option Laws, and regulation of the lawful sale of alcoholic beverages.
 - a. Permit Branch processes all applications for licensing and, once permits are issued, performs all on-going maintenance to the permit status, bonds, and renewals.
 - b. Warehouse stores the alcoholic beverage inventory sold by the Agency and fills and ships orders to licensed retailers.
 - c. Purchasing Division is responsible for the registration of spirit and wine vendors and their products overseeing liquor shipments including special orders into the warehouse and providing inventory control.
 - d. Enforcement is responsible for enforcement of the Local Option ABC laws, Prohibitions Laws, and certain laws regulating beer.
7. Office of Property Tax is responsible for monitoring the assessments of Ad Valorem value levels and investigating the work product and appraisal methods adopted by the local governing authorities in order for the Commission to equalize the valuation of property throughout the state. (Ad Valorem or property taxes on real and personal property are primarily collected at the local level rather than by the Mississippi State Tax Commission.)
 - a. Valuation and Exemption Bureau is responsible for preparing for the Commission's consideration assessments of public service companies, private rail cars, aircraft, mobile homes, motor vehicles, and reviewing industrial tax exemptions to determine if the property qualifies for the exemption.
 - b. Homestead Exemption Branch is responsible for reimbursing taxing units of local governing authorities for losses due to the granting of homestead exemptions.
 - c. Property Assessment Bureau ensures consistent appraisal and valuation equalization of properties among the municipalities and counties of the state.

105 Obtaining Information

The purpose of this section is to describe how a taxpayer or other interested person may obtain information, other than information concerning proposed rules, from the Agency.

1. Compliance with Mississippi Public Records Act of 1983.
 - a. Any person needing to inspect or obtain a copy of any public record in the possession of the Agency must make a written request to the Commission Secretary. The request must describe the record required and whether it is to be provided through either personal inspection or reproduction.
 - b. Upon receipt of the request, the Agency shall notify the requesting party of the cost or time and place of access to the record. The requesting party must then forward the costs of producing any records. The cost charged is pursuant to a fee schedule established by the Agency. Every reasonable effort will be made to respond to the request within fourteen (14) working days from the date of when the request was made and the fee to produce such record has been paid. Records may not be removed from the Agency for reproduction purposes.
 - c. If the Commissioner denies the requesting party access to any record, the requesting party will be notified in writing of the cause of denial within fourteen (14) working days from the date of the request.

2. Obtaining copies of tax returns or applications filed with the Agency.
 - a. All tax returns, including documents supporting those returns and other tax forms required to be filed with the Agency, are confidential and specific information relating to a particular taxpayer is not public information. The Agency may not release confidential information to anyone other than the taxpayer unless specifically authorized by the taxpayer, statute, or directed to do so by a proper judicial order.
 - b. A taxpayer may request a copy of personal filings by submitting a written request. The request must be signed by the taxpayer. In the case of a return of an individual, this request must be signed by that individual. In the case of an income tax return filed jointly, this request must be signed by either of the individuals with respect to whom the return is filed. In the case of a partnership, this request must be signed by any member of the partnership during any part of the period covered by the record requested. In the case of a return filed by a member managed limited liability company, this request must be signed by any person who is a member of the limited liability company. In the case of a return filed by a manager managed limited liability company, this request must be signed by any manager of the limited liability company. In the case of a return of a corporation, this request must be signed by a principal officer of the corporation and attested to by the corporation's secretary or another officer.
 - c. A taxpayer may request copies of returns to be released to other parties by providing the Agency a signed and notarized document authorizing the release of the document.
 - d. The written request for copies should be submitted to the Commission Secretary. The written request must include the type of tax return, the tax period(s) requested, and the tax account and/or taxpayer identification number. A fee is charged for the cost of reproducing the copies.
3. Title and Motor Vehicle tag information
 - a. If a person needs to obtain information from an individual motor vehicle record maintained by the Agency, that person must qualify under the guidelines set by federal statute. The Agency has promulgated Revenue Rule 3 in accordance with the Federal Driver's Privacy Protection Act that protects certain information contained on motor vehicle records. In order to request information, Form 77-600 must be completed and forwarded along with the appropriate fees to the Agency for processing. This form and regulation along with other applicable information is available on the Agency website at www.mstc.state.ms.us.
 - b. Any title and motor vehicle tag information received by the requesting party is privileged and may not be disclosed to anyone else unless provided for in the rule. Please note that using the information acquired from motor vehicle records for any use other than a permitted use as defined in the rule may subject the offender to criminal fines and other damages.
4. Publications
 - a. Persons may receive information through instructions included with forms, notices written concerning law changes or procedural changes, booklets, and other publications of the Agency. This information is provided to answer those questions frequently asked but is not intended to be all inclusive. In any situation where the

information provided does not adequately address the person's particular circumstances, it is advisable to seek additional guidance.

b. Interested parties may, for a fee, order a copy of these publications by sending a request to the Commission Secretary, however, much of this information may be found free of charge on the Agency's website.

5. Website

a. Statistical information may be obtained from the Agency website. Many forms are available online and may be printed for use.

b. The website also contains links to other websites including links operated by other government agencies, tax related organizations, and tax software providers. The Agency has no control over the content included in websites other than its own.

c. An individual may check the status of an individual income tax refund online. Persons may also check the validity of certain tax permits or licenses on the website.

106 Adoption of Rules and Regulations

106.01 Authority to adopt rules and regulations

The Commission and/or Commissioner are authorized by statute to promulgate rules and regulations consistent and complementary with the law to enforce the laws administered by the Agency. A rule or regulation is a statement of general applicability that implements, interprets, or prescribes policy or describes procedure or practice of the Agency and may include responsibilities of a person not specifically required by statute or by an existing rule or regulation, but this does not include those items excluded in Mississippi Code 25-43-1.102 (i) from the definition of "rule". The terms "rule" and "regulation" are synonymous of each other and the Commission and Commissioner use both terms in referring to the rules they adopt and promulgate. The following discussion of the rule making process applies not only to rules but also to regulations.

106.02 Rule adoption process

With the exception of emergency rules as outlined in Paragraph J of this section, adoption of a new rule or regulation or the amendment of an existing rule is a multi-step process including the following:

1. Drafting the rule or rule amendment.

When the need for a rule or rule amendment is determined, a proposed rule is drafted by Agency personnel for review and discussion with the Commission or Commissioner.

2. Preparing economic impact statement.

a. An estimate of the costs and benefits to the public, Agency, or to any other government entity of implementing and enforcing the proposed rule and any anticipated effect on state or local revenues will be prepared by the Agency when required and as provided by 25-43-3.105 of the Mississippi Code. A summary of this economic impact statement will be filed with the Secretary of State for publication along with the Commission's or Commissioner's notice of intent to adopt a rule or rule amendment. Any additional information that the Agency determines may be useful will be included in the statement.

- b. An interested party may submit any specific concerns about the economic impact statement during the public comment period to the Agency contact person provided in the notice of intent to adopt a rule.
 3. Notice of intent to adopt a rule or rule amendment.
 - a. A notice of intent to adopt a rule or rule amendment will be prepared including information pertaining to how interested persons may comment on the proposal. The notice of intent to adopt a rule will include a statement of the purpose and effect of the rule, a summary of the rule and its estimated costs, opportunities for public comment, and the text of the rule.
 - b. The notice will be sent to the Secretary of State and to interested parties who are on the Agency Rule Notification Register.
 4. Providing opportunity for interested parties to comment.
 - a. An opportunity for public participation by means of a public comment period will be provided. The notice of intent to adopt a rule or rule amendment will advise the public of its right to comment and provide information concerning how, when, and where to respond.
 - b. Interested or affected individuals or entities may comment in writing at any time during the public comment period. All written comments should be mailed or delivered to the Commission Secretary within the provided time period for public comment.
 - c. The Commission or Commissioner may hold a hearing prior to the final adoption of a proposed rule or amended rule. Public comment will be accepted at the hearing as provided in this section. Written comments received or comments made at the hearing are not binding, but will be considered by the Commission or Commissioner in determination of the final form of the rule or rule amendment.
 - d. The Commission or Commissioner may designate an officer for the purpose of presiding over said hearing and for documenting attendance and comments made. The presiding officer can be a member of the Commission, the Commission Secretary, or an employee of the Agency.
 - e. The hearing date will be scheduled for a date that is at the minimum twenty (20) days after the notice of the proposed rule is filed with the Secretary of State. The hearing will be open to the public. Anyone wishing to make a presentation at the hearing should notify, in writing, the Commission Secretary no less than seventy-two (72) hours prior to the scheduled hearing time. The written request to speak must include a brief description of the position that will be presented.
 - f. The presiding officer may limit the time allotted to each speaker. The number of speakers addressing a specific position on an issue may be limited by the presiding officer to prevent undue repetition at the hearing. In the event speakers representing a specific position are limited, the speakers selected to speak to their position will be determined based upon order of receipt of the request. The speaker will be notified of the time allotted and if the speaker is denied due to cause of repetition or failure to timely request opportunity to speak at the hearing.
 - g. A record of all persons or entities requesting opportunity to speak will be maintained. This record will include the written requests to speak at the public hearing and any denials for cause of repetition or untimely filing of request to participate in the public hearing. All persons participating or unable to participate in

the hearing may submit written comments at any time during the public comment period.

h. All persons in attendance will be requested to sign a register to document their attendance at the hearing. A printed agenda including the names of all speakers and their positions on issues concerning the proposed rule will be provided to those in attendance.

5. Filing the rule for adoption

The Commission and/or Commissioner may change, alter, or delete any provisions of the proposed rule after the public comment period unless such change, alteration, or deletion would prevent the rule from being finally adopted per Section 25-43-3.107 of the Mississippi Code. The Commission and/or Commissioner will file the final form of the rule or rule amendment with the Secretary of State. The effective date is thirty (30) days after filing with Secretary of State unless another date later than the required thirty (30) days required is specified in the law or rule.

6. Obtaining information on proposed rule.

a. The Agency will maintain the Agency Rule Notification Register of all persons or entities that have requested notices for all proposed rule changes. The Agency will send notice on all proposed rules or rule amendments to these persons by mail. A fee for this service will be charged for mailing the notice and billing will accompany all notices. A *minimum* fee of \$25 will be charged for each notice that is mailed. Failure to remit the fee as provided will forfeit any future mailings until such fee has been paid. Any interested person may be included on the mailing register for all proposed notices by writing to Commission Secretary. It is a person's responsibility to provide and keep a correct address on file with the Agency.

b. If a person desires notice on all proposed rules and is agreeable to receive the notices by e-mail, there will be no charge for this service. Any interested person may be included on this register by writing to the Commission Secretary. If email preference is not specified, notice will be sent by mail which includes a fee.

c. A person may also request a copy of a proposed rule or rule amendment on a single time basis by contacting the Agency as provided above. For any mailed document, the minimum fee is still applicable.

d. Rule information may also be obtained on the Agency web site.

7. Rule making record

a. The Agency will maintain a current rulemaking docket that contains a listing of the subject matter of possible rules under active consideration within the Agency.

b. The rulemaking docket shall include all information related to the rule in process. Included will be:

- i. The subject matter of the proposed rule,
- ii. Reference to all published notices relating to the proceeding,
- iii. Where written submissions or written requests for an opportunity to make oral presentations on the proposed rule may be inspected,
- iv. The time during which written submissions may be made,
- v. Where and when oral presentations may be made,
- vi. Where any economic impact statement and written requests of the issuance of other information concerning an economic impact statement may be personally inspected,

- vii. The current status of the proposed rule, and
- viii. The date of each rule's adoption and when the rule becomes effective.
- c. All materials, submissions, reports, and other information that relates to each rule adoption process and procedure will be maintained at the main offices of the Mississippi State Tax Commission and will be available for public inspection by contacting the Commission Secretary.
- 8. Repeal of a rule

If the Commission and/or Commissioner determine that an existing rule should be repealed, the process followed will be the same procedure as for adoption of a new rule or amendment to a rule.
- 9. Termination of the proceeding

The Commission and/or Commissioner may determine that the rule or rule amendment should not be adopted after the notice of proposed rule but prior to adoption of the rule. In such event, notice of a termination will be filed with the Secretary of State and notice will be provided to those persons listed on the Agency Rule Notification Register.
- 10. Emergency rules
 - a. The Commission or Commissioner may determine that an imminent peril to the public health, safety, or welfare requires adoption of a rule with less than twenty-five (25) days notice as normally provided.
 - b. In such event, the Commission or Commissioner will notify the Secretary of State of the need for an emergency rule, the form of the rule, and the effective dates of the rule. There will be no public hearing or public comment period provided.
 - c. The Commission or Commissioner will determine if the need for the emergency rule continues, and if so, will begin the process to adopt the rule permanently as provided in this section.

107 Hearings and Appeals

Effective July 1, 2005, a new statutory uniform administrative and judicial appeal procedure from certain acts of the Agency was established. The administrative appeal process described in this section is based on this new statutory uniform administrative and judicial appeal procedure and is applicable to all administrative and judicial appeals brought under this new statutory procedure. This new statutory procedure is not however applicable to any assessment, refund claim, request for waiver of tag penalty or the suspension, revocation, surrender, seizure or denial of a permit, tag or title or the administrative appeal or judicial appeal thereof where the initial date of said assessment, refund claim, tag penalty, suspension, revocation, denial, surrender or seizure is before July 1, 2005. Anyone seeking an administrative appeal or a judicial review of an action of the Agency where the initial date of the action is prior to July 1, 2005 is directed to consult the applicable administrative appeal and judicial review statutes in effect at the time of the action to determine the proper procedures to be followed and not the provisions of this section.

107.01 Administrative Appeal

This section describes the administrative appeal process applied when a person is aggrieved by certain actions of the Agency. Typically, that action is an assessment of tax

when the taxpayer does not agree tax is due; however, the action may also include a denial of refund, assessment of penalties or interest, and other similar items. The intent of the administrative appeal process is to secure a just resolution or decision.

107.02 Administrative Appeal Process

With the exception of an appeal of a tag penalty, this section does not describe the administrative appeal process relating to actions of the Commission and/or the Agency regarding ad valorem taxes and homestead exemption. An administrative appeal from these actions shall be as prescribed by statute. This section also does not describe the administrative appeal process of actions taken by the Commission and/or the Agency under the Local Option Alcoholic Beverage Control Law and/or under the Mississippi Native Wine Act of 1976. The administrative appeal process for such ABC actions is already described in the ABC Regulations of the Commission.

1. Informal Review

- a. The person may seek an informal review of any assessment or other action believed incorrectly issued or any refund improperly denied.
- b. In the case when an auditor or examiner determines additional tax is due, the person should first attempt to resolve any questions with the auditor or examiner. If unable to reach an agreement of the audit results with the auditor, a conference with the auditor's supervisor or the supervisor's designee may be arranged. This conference should provide opportunity to both parties to gain a thorough understanding of the basis of the assessment and to make sure that the facts of the case are correct and complete.
- c. An informal review may be granted for any situation, but is not required before seeking administrative appeal. The person may continue to attempt to resolve an issue informally with Agency staff once the formal appeal process has begun but the informal review does not toll the time limit to appeal to the Review Board.

2. Representation

A person may represent himself or may choose to have a representative at any point throughout the appeal process. Hearings before the Review Board, a hearing officer, or the Commission are considered confidential and are not open to the public; however, the appellant may permit another person(s) to attend the hearing and to participate as deemed appropriate or necessary.

3. Interest continues to accrue on unpaid balances.

Filing an appeal does not stop interest charges from accruing on any unpaid tax liability. In some situations, penalties may also continue to accrue.

4. Written requests for Administrative Appeal

- a. The taxpayer or person appealing must request a hearing in writing. The written request for appeal should include a statement of the relief being sought and the amount of tax, fees, interest and/or penalty, or the action in dispute. The request should also include the tax identification or tax account number, type of tax and tax periods involved, and the reason the taxpayer or person appealing disagrees with the assessment or action.
- b. The request must include the person's mailing address and the name and address of his designated representative, if any. It is the responsibility of the person appealing to provide and maintain an official mailing address on file with the Review Board

- and/or Commission Secretary. Any change of address during the appeal process must be made in writing and addressed to the body in which the appeal is pending. This address change is for the appeal process only and does not include any address change to tax account information maintained by the Agency.
- c. The timeline for appeals are explained further in this section. A request for appeal not received within the time periods provided below will be dismissed.
5. Notice of hearing.
 - a. A person or the authorized representative will be notified of the hearing by mail at the last known address. The last known address will be the mailing address provided in the written request of appeal.
 - b. The hearing notice will contain the time, place, and date of the hearing. Notice to the person's or taxpayer's authorized representation constitutes notice to the person or taxpayer.
 6. Continuance of hearing
 - a. A request for a continuance of the hearing will be routinely granted if the request is received within ten (10) days after the notice of the hearing is mailed. If the request for continuance is received beyond ten (10) days, then the determination to continue the hearing will be decided by the Chairman of the Review Board or the Commissioner.
 - b. The Tax Commission will not be responsible for delay in the delivery or mail.
 7. Confidential hearings

All hearings are closed to the public due to the confidential nature of the subject matter. However, through written authorization, the person appealing may waive the right to a closed hearing.
 8. Items not subject to appeal.

Items, in general, not subject to administrative appeal include but are not limited to:

 - a. Certain bond amounts,
 - b. Penalty rate increases,
 - c. Declaratory Opinions,
 - d. Letter rulings,
 - e. Oral or written advice,
 - f. Issuance of levy or garnishments,
 - g. Issuance of liens, warrants or jeopardy warrants, and
 - h. Diversions or distributions of tax revenue.
 9. Request for removal of voting member of appeal board
 - a. Any person may request that a member of the voting panel of the Review Board be replaced or a member of the Commission not participate in a hearing if it appears that person's impartiality might be questioned by a reasonable person knowing all the circumstances, or for other grounds.
 - b. A written or verbal request for removal of a voting member from the decision process stating the reason the member's partiality is questioned must be made by the taxpayer or person appealing before the commencement of a Review Board hearing. A written request for removal of a member of the Commission from the decision process must be made by the taxpayer or person appealing no more than two (2) weeks after receiving notice of a hearing before the Commission.
 10. Timeline for filing appeals

- a. Assessment of tax, denial of refund, or denial of a waiver of tag penalty:
 - i. The taxpayer, if aggrieved by an assessment of tax, penalty, interest, a denial of a refund, or by a denial of a waiver of tag penalty, may apply for a hearing before the Review Board. The taxpayer must submit a request in writing to the chairman of the Review Board within thirty (30) days of the date of the action.
 - ii. If the Review Board determines that an assessment of tax, penalty or interest is due, the taxpayer must pay the assessment or appeal to the Commission within thirty (30) days from the date of the order of the Review Board. The taxpayer must submit the request for appeal in writing to the Commission Secretary.
 - iii. If the Commission determines that the assessment of tax, penalty, or interest is due, the taxpayer must either pay the tax due or appeal the action to the appropriate chancery court within thirty (30) days of the date of the order of the Commission.
- b. Suspension, surrender, seizure or revocation of a permit, tag, or title:
 - i. If the Agency determines that action against a permit, tag, or title is necessary, the permittee, tag holder, or title interest holder will be notified by mail of the agency's intention to revoke, suspend, or order the surrender or seizure of the permit, tag, or title. The notice will advise the permittee, tag holder, or title interest holder of the time and location for a hearing on the matter that is at a minimum of thirty (30) days from the date of the notice. The hearing will be conducted by the Review Board or by a hearing officer designated by the Commissioner.
 - ii. If the permittee, tag holder or title interest holder is aggrieved by the determination of the Review Board or hearing officer, the aggrieved party may appeal in writing to the Commission within thirty (30) days of the date of the order. The matter will become final after thirty (30) days if not appealed.
 - iii. The hearing before the Commission shall be taken down by a court reporter. The order of the Commission shall become final unless the permittee, tag holder, or title interest holder appeals within thirty (30) days from the date of the order in the appropriate chancery court seeking a review of the order.
- c. Denial of an application for a permit, tag, or title.
 - i. If the Agency determines that an application for a permit, tag, or title should be denied, the applicant will be notified either by mail or in person of the Agency's intention to deny the permit, tag, or title. If the denial involves an application for a title, the notice will also be mailed to the designated agent who submitted the title application and any other alleged title interest holders shown on the application. If the applicant or any title interest holder appearing on the application is aggrieved by the denial of application, the aggrieved party shall file a written appeal with the Review Board within thirty (30) days of the notice. The matter will become final after thirty (30) days if not appealed.
 - ii. If the applicant or the title interest holder remains aggrieved by the determination of the Review Board, the aggrieved party may appeal in writing to the Commission within thirty (30) days of the date of the order. The matter will become final after thirty (30) days if not appealed.
 - iii. The hearing before the Commission shall be taken down by a court reporter. The order of the Commission shall become final unless the applicant of the

permit, tag, or title, or the title interest holder files within thirty (30) days from the date of the order in the chancery court seeking a review of the order.

11. Review Board hearing

a. With exception of matters administered by the Office of Alcoholic Beverage Control and Commission actions related to Ad Valorem Tax, a taxpayer or person in disagreement with an assessment, refund, or other appealable action of the Agency may request a hearing before the Review Board. Three members of the Review Board shall constitute a quorum and may hear any matter before the Review Board; however, an appeal of the intent to revoke, suspend, or order for seizure or surrender of a permit, tag, or title may be heard by a panel of the Review Board or by a hearing officer.

b. Upon timely receipt of a written request from the person appealing or an authorized representative, the Review Board shall promptly schedule a hearing for consideration of the appeal. At the hearing, the Review Board shall decide the issues presented according to applicable law and the facts.

c. A decision in favor of the person appealing may be made without a hearing when the facts are not in dispute, the issues are clearly identified, or the law has been applied to similar situations in previous decisions.

d. There will be no official transcript or recording made of a Review Board hearing. The official record of the hearing will be the minutes and orders of the Review Board which are confidential for all tax matters. Review Board hearings shall be informal and the rules of evidence will be relaxed.

e. The person requesting the hearing or the person's authorized representative will be asked to discuss the facts supporting the claim to provide explanation of how the law supports that claim. Representatives of the Agency may also be asked to discuss the facts in support of the action or cause.

f. The Review Board may request the person appealing the matter or Agency staff to provide additional information and/or documents during the course of its review. Time limits for submission of the additional information or documents will be established by the chair of the Review Board. If the person from whom information or documents are requested fails to respond to the request in the time provided, the Review Board may decide the appeal without the supplemental documents or information.

g. An Order will be issued after the Review Board has fully considered the information provided at the hearing, any post-hearing information, and the laws specific to the case. The chair of the Review Board will prepare the order and mail it to the person or authorized representative. Notice to the authorized representative constitutes notice to the person appealing.

h. The Review Board may elect to uphold the assessment, to amend the assessment, to issue a revised assessment, to issue a refund or credit, to remand the issue to the originating division for further work, or any other action it deems appropriate. If the person remains aggrieved with the decision of the Review Board, the action may be appealed to the Tax Commission.

12. Commission hearing

a. Any authorized appeal must be timely made to the Commission in writing. The Commission shall consider the appeal request and notify the person appealing or his

authorized representative of the time and place fixed for the hearing. Any two members of the Commission constitute a quorum and may hear all appeals.

b. The person or the authorized representative will be asked to discuss the facts and documents in support of the claim and to explain how the law supports that claim. Commission hearings shall be informal and the rules of evidence will be relaxed.

c. The Commission may request the person appealing the matter or Agency staff to provide additional information and/or documents during the course of its review. Time limits for submission of the additional information or documents will be established by the chair of the Commission. If the person from whom information or documents are requested fails to respond to the request in the time provided, the Commission may decide the appeal without the supplemental documents or information.

d. The Commission may elect to uphold the assessment or action, to amend the assessment, to issue a revised assessment, to issue a refund or credit, to remand the issue to the Review Board or originating division for further work, or any other action it deems appropriate. The Commission may also request the person appealing, Agency staff, or both to submit proposed findings of fact, conclusions of law, orders, and/or briefs.

e. After the Commission has fully considered the information provided at the hearing, any post-hearing information, and the laws specific to the case, it shall issue its order conveying its decision in regard to the appeal which order is considered confidential for all tax matters excluding ad valorem tax. The Commission Secretary will mail the order to the person appealing or the designated representative. Notice to the person's authorized representative constitutes notice to the person appealing.

f. In Commission hearings involving tax determinations, the hearing will not be transcribed since any judicial review of the Commission decision will involve a full evidentiary judicial hearing. However, these hearings will be tape-recorded.

g. The Commission hearings regarding beer, tobacco, or sales tax permits, and tag or title matters will be recorded by a court reporter. Hearings before the Commission regarding Alcoholic Beverage Control (ABC) matters shall be held as provided in ABC Regulations.

13. Withdrawal of an appeal

a. An appeal before a hearing officer, Review Board, or Commission may be withdrawn by the taxpayer or person filing the appeal at any time. The withdrawal may be made voluntarily by the person or may occur involuntarily under the following conditions.

b. An involuntary withdrawal of an appeal may occur as result of the person failing to appear at a scheduled hearing, failing to timely provide a written appeal in lieu of attendance at a hearing, or by any other act or failure that the body hearing the appeal determines represents a failure on the part of the person to defend his appeal. An involuntary appeal will be documented in the minutes providing the basis of the withdrawal.

c. A voluntary withdrawal of appeal must be received in writing and sent by the person or authorized representative to the chairman of the Review Board if the appeal is before the Board, or to the Commission Secretary if the appeal is before the Commission.

d. Following a withdrawal of an appeal, the action shall become final and not subject to further review by the Review Board, Commission or a court. The agency shall then proceed with any action in accordance with the law.

14. Judicial review

a. Any person aggrieved by the final Order of the Commission may seek a judicial review of that decision as provided by law. The petition shall be filed against the State Tax Commission and must include a concise statement of facts as contended by the person appealing, identify the order from which the appeal is being taken, and set out the type of relief sought.

b. The petition for a review of an assessment of tax must include a bond double the amount in controversy conditioned to pay the judgment of the court. The bond must be issued by a surety company qualified to write surety bonds in Mississippi. Alternatively, the taxpayer may pay the assessment, under protest, prior to filing the petition and seek a refund of such assessment.

c. In a petition involving a revocation, suspension, seizure, order to surrender, or denial of a permit, tag, or title, the petition shall contain certification that the petitioner has paid to the Commission Secretary the estimated cost of preparation of the entire record of the Commission on the matter for which a review is sought.

d. The person or the State Tax Commission may appeal an order of the chancery court to the state Supreme Court.

108 Requests for Guidance

1. Any taxpayer or person seeking information concerning their responsibilities and requirements with the laws administered by the Agency may request advice and guidance concerning those obligations. The requests may be through an informal means such as oral advice or letter rulings, or formally through a declaratory opinion.

2. Taxpayers or other persons may also obtain publications of the Agency that provide information useful to complying with the laws administered by the Agency. Most printed publications of the Agency may also be found on the Mississippi State Tax Commission website.

108.01 Oral advice.

1. Many questions may be answered easily over the telephone or in person by an agent of the Commissioner. Advice given at audit meetings or conferences with Agency employees is considered oral advice. Oral advice is considered advisory only and is non-binding.

2. Taxpayers or persons who have complicated questions or issues driven by their own particular business facts and circumstances should seek a letter ruling on the matter or request further advice from the Agency as provided.

108.02 Letter rulings.

1. Taxpayers or other persons may seek guidance by submitting a written request for a letter ruling to the Commission Secretary.

2. When asking for instruction on a specific issue, it is necessary to provide adequate information in order to accurately answer the question. Because the correspondence is

based on one person's specific facts and circumstances, the response is restricted to the taxpayer or person making the request for information and the specific facts involved.

3. This written response is considered informal guidance; however, the taxpayer or person requesting the letter ruling may rely on the response absent a law or regulation change and provided that the information presented is factual and complete with no material omissions and no changes have been made with regard to the information provided.

4. If the Agency should at a later date determine that its response was incorrect, the letter ruling will be retracted in writing and the effect of the retraction will be prospective from the date of the retraction letter forward.

5. Notwithstanding a written retraction of the letter ruling, a law or rule change, or the person's particular circumstances altering the issue under discussion, a letter ruling will be valid for a period of seven (7) years from the date of its issuance. At the end of the seven (7) year period, the person should review and update the information in his original request for information and re-submit the question to the Agency.

6. Any letter rulings written by the Agency prior to the adoption of this regulation will be considered valid for a period of seven (7) years from this regulation's adoption date notwithstanding a written retraction of the letter ruling, a law or rule change, or the person's particular circumstances altering the issue under discussion.

7. The Agency will accept anonymous requests for a letter ruling, such as in the case of a voluntary disclosure, but the response will not be binding until the identity of the person has been disclosed to the Agency. The name and other identifying information of the anonymous entity should be provided within ninety (90) days of the date of the letter ruling. The letter ruling will be considered non-binding if the identity of the entity is not provided within the time period provided.

8. Notice to the person's authorized representative constitutes notice to that person. It is the person's continuing obligation to inform the Agency of the identity and address of its representation.

108.03 Declaratory Opinions.

1. Scope of rules.

These sections set forth the Agency's rules governing the form and content of requests for declaratory opinions, and the Agency's procedures regarding the requests, by Mississippi Code Ann. § 25-43-2.103.

2. Persons who may request declaratory opinions.

Any person with a substantial interest in the subject matter may submit a written request to the Agency for a declaratory opinion by following the specified procedures. "Substantial interest in the subject matter" means that the interest must be direct, immediate, and not remote in consequence. A "substantial interest" is one that surpasses the common interest of all citizens.

3. Subjects that may be addressed in declaratory opinions.

The Agency will issue declaratory opinions regarding subject matters that are within the primary administrative responsibility of the Agency. Subject matters within the oversight of the Agency include the applicability of specified facts to a statute administered or enforced by the Agency or a rule promulgated by the Commission or Commissioner. The

Agency will not issue a declaratory opinion regarding a statute or rule beyond the administration of the Agency.

4. Circumstances in which declaratory opinions will not be issued.

The Agency may, for good cause, refuse to issue a declaratory opinion. Without limiting the generality of the foregoing, the circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

- a. The matter is outside the primary jurisdiction of the Agency.
 - b. The question presented lacks clarity, the facts provided are non-sufficient to provide a conclusive determination, or the information is too vague or too broad to provide an answer.
 - c. A pending or active audit, criminal tax investigation, anticipated litigation, administrative action, or other determination before the Agency or court which may either answer the question presented or otherwise make an answer unnecessary on subject matter under question is in progress.
 - d. The statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented.
 - e. The confidentiality waiver on the Declaratory Opinion Transmittal Form is not signed and provided to the Agency with the request for a declaratory opinion.
 - f. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in this rule.
 - g. The request seeks to resolve issues that have become moot, are abstract, or involve multiple hypotheticals such that the requestor is not substantially affected by the rule or statute on which a declaratory opinion is sought.
 - h. No controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute or rule.
 - i. The question presented by the request concerns the legal validity of a statute or rule.
 - j. The requesting party is not directly affected by the application of the statute, rule or regulation.
 - k. No clear answer is determinable.
 - l. The question presented involves the application of a criminal statute or facts that may constitute a crime.
 - m. The answer to the question presented would require the disclosure of information that is privileged or otherwise protected by law from disclosure.
 - n. The request involves an issue that may adversely affect the interests of the State, the Commission, or any of the Agency's officers or employees in any litigation that is pending or may reasonably be expected to arise.
5. Form of the request for a declaratory opinion.
- a. A written request for a Declaratory Opinion, including a completed Declaratory Opinion Transmittal Form, is required. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper. Requests may be in the form of a letter addressed to the Commission Secretary or in the form of a pleading as might be addressed to a court.
 - b. All requests must be mailed or delivered to the Commission Secretary. The request and any envelope shall clearly state that it is a request for declaratory opinion.

Oral, telephone, or facsimile requests are not acceptable. The request must include a completed transmittal form as prescribed by the Commissioner and executed confidentiality waiver signed by the taxpayer or person requesting the declaratory opinion.

c. Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request or a duly authorized representative. The signing party shall attest that the request complies with the requirements set forth in these rules. A declaratory opinion will have no effect if it is later determined the request did not comply with the requirements of this rule.

d. A request must be limited to a single set of facts and each request shall contain the following:

i. Clear identification of the statute, rule, or order at issue;

ii. Concise statement of the issue or question presented for the declaratory opinion;

iii. Complete and accurate statement of all facts relevant to a resolution of the question presented;

iv. Identity of all known persons involved or impacted by the factual situation causing the request, including their relationship to the facts, name, mailing address, and telephone number;

v. Statement sufficient to show that the person seeking relief is substantially affected by the statute, rule, or regulation.

e. A request may contain relevant information to support a position or proposed opinion suggested by the requestor. The argument may be submitted in the form of a brief containing a full discussion of the reasons, including any legal authorities in support of such position of the requestor.

f. The Agency may request that additional information be submitted by any interested party.

6. Time for Mississippi State Tax Commission's response.

a. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Agency will respond in writing by one of the following:

i. Issue an opinion declaring the applicability of the specified statute, rule, or order to the specified circumstances;

ii. Decline to issue a declaratory opinion, stating the reasons for its action;

iii. Agree to issue a declaratory opinion or a written decision declining to issue an opinion by a specified time but no later than ninety (90) days after receipt of the written request.

iv. The forty-five (45) day period will begin on the first State of Mississippi business day after the request is received by the Agency.

b. Responses may be sent to the authorized representative in lieu of the requesting party or the person signing the request.

7. Public availability of requests and declaratory opinions.

Declaratory opinions and requests for declaratory opinions are available for public inspection. The taxpayer must sign a confidentiality waiver to authorize the Agency to disclose the contents of the declaratory opinion.

109 Address Information

The following are mailing and delivery addresses for correspondence with the Agency as referred to in this regulation.

1. Commission Secretary
 - a. By mail: Commission Secretary, P. O. Box 22805, Jackson MS 39225-2805.
 - b. By delivery: Commission Secretary, 1577 Springridge Road, Raymond MS 39154
 - c. E-Mail: CommSec@mstc.state.ms.us
2. Chairman of Review Board.
 - a. By mail: Chairman of Review Board, P. O. Box 22828, Jackson, MS 39225
 - b. By delivery: Chairman of Review Board, 1577 Springridge Road, Raymond MS 39154
 - c. E-Mail: ReviewBd@mstc.state.ms.us
3. Website.
www.mstc.state.ms.us

110 Effective Date of Regulation

This regulation shall be in effect on and after June 30, 2005.

111 (Reserved)

112 (Reserved)

113 (Reserved)

114 (Reserved)

115 (Reserved)

116 (Reserved)

117 (Reserved)

118 (Reserved)

119 (Reserved)

120 (Reserved)

ADOPTED BY MISSISSIPPI STATE TAX COMMISSION, APRIL 27, 2005

Joseph L. Blount, Commissioner of Revenue

Terry L. Jordan, Associate Commissioner

Donald L. Green, Associate Commissioner

ADOPTED BY CHAIRMAN, MISSISSIPPI STATE TAX COMMISSION, APRIL 27, 2005

Joseph L. Blount, Chairman

Chapter 02 Electronic Funds Transfer

100 Scope of Rules

This chapter sets forth the rule to be used by the Mississippi State Tax Commission in the administration of Mississippi Code 27-3-81, authorizing the Mississippi State Tax Commission to require certain taxpayers to remit taxes by electronic transfer of funds so that the funds will be immediately available to the State Treasury on the due date of payment. If there is a conflict between this rule and any other rules applicable to taxes subject to electronic funds transfer, this rule shall govern.

101 Definitions

The terms and phrases used in this rule shall have the meanings prescribed in this section, unless a different meaning is clearly indicated by the context in which the term or phrase is used.

1. ACH—Automated Clearing House
2. ACH Credit -- The electronic funds transfer payment method where transactions are initiated and generated by the taxpayer, cleared through the ACH system for deposit to the State Treasury.
3. ACH Debit -- The electronic funds transfer payment method where transactions are generated by the State Tax Commission upon the taxpayer's instruction and cleared through the ACH system for deposit to the State Treasury.
4. ACH Trace Number -- The unique number assigned to an electronic payment transaction by the financial institution originating the transaction.
5. Addenda Record -- The information required by the Mississippi State Tax Commission in an ACH Credit transfer or Fedwire transfer, in approved electronic format.
6. Access Code -- A confidential code assigned to each taxpayer which uniquely identifies the payor and allows the payor to communicate payment information to the Data Collection Center. The taxpayer may be given a separate access code for each tax type.
7. Automated Clearing House -- A central distribution and settlement point for the electronic clearing of debits and credits between financial institutions rather than the physical movement of paper items.
8. Call-in Day -- The day on which a taxpayer communicates payment information to the Data Collection Center.
9. Call-in Period -- The specified time interval in each call-in day during which EFT payment information received by the Data Collection Center is processed for transactions occurring on the next business day. Payment information must be communicated to the Data Collection Center prior to 3:30 p.m. (Central Time) on the call-in day to clear the ACH for deposit in the State Treasury on the next business day.
10. Confidential Taxpayer Identification Number -- See definition for access code
11. Data Collection Center -- The third party vendor who collects and processes EFT payment information from taxpayers, when using the ACH Debit method.
12. Due Date -- The date on or before which a payment is required to be made by a taxpayer under a revenue law of this state.
13. Effective Date of Implementation -- The date which the taxpayer is approved by the State Tax commission to pay a tax type using EFT.

14. EFT - Electronic Funds Transfer
15. Electronic Funds Transfer -- Any transfer of funds initiated through an electronic terminal, telephone instrument, computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account using the methods specified in this rule.
16. Fedwire -- See definition for wire transfer.
17. Mississippi Electronic Funds Transfer System -- See definition of Data Collection Center.
18. Payment Information -- The data which the Mississippi State Tax Commission requires of a taxpayer making an EFT payment.
19. Payor -- The taxpayer.
20. Reference Number -- The unique number assigned to an electronic payment transaction by the financial institution originating the transaction.
21. State Tax Commission -- The Mississippi State Tax Commission.
22. State Treasury -- The Treasury of the State of Mississippi.
23. State's Fiscal Year -- July 1 through June 30.
24. Tax Commission -- The Mississippi State Tax Commission.
25. Tax Type -- A tax, fee, license or other obligation which is subject to the EFT payment requirements, each of which shall be considered a separate category of payment. This will include all taxes, fees, licenses or other obligations which are administered by the Mississippi Code of 1972.
26. Taxpayer -- Any person required to remit an amount to the Mississippi State Tax Commission whether it is for a tax, fee, license, or any other obligation. For the purpose of this rule, "person" includes any individual, firm, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and includes the plural as well as the singular number.
27. Treasury -- The Treasury of the State of Mississippi.
28. Verification Code -- Code calculated from the payment amount used to ensure that the payment is communicated correctly.
29. Wire Transfer -- An instantaneous electronic funds generated by the taxpayer to the State Treasury.

102 General Requirements

1. Under the authority granted to the Mississippi State Tax Commission under Mississippi Code 27-3-81, the Mississippi State Tax Commission may require consistent with the cash management policies of the State Treasurer, that any person owing \$20,000.00 or more in connection with any return, report, or other document to be filed with the commission, can be required to remit any such tax liability by electronic funds transfer.
2. Effective January 1, 1994, the Mississippi State Tax Commission will implement an EFT program which will require certain taxpayers subject to the following taxes to remit tax payments by electronic funds transfer:
 - a. Gaming
 - b. Insurance Premium
 - c. Beer Excise
 - d. Timber Severance

- e. Tobacco Wholesale
 - f. Oil Severance
 - g. Gas Severance
3. The Mississippi State Tax Commission will periodically make a determination of additional tax types to be added to the EFT program. Threshold amounts will be established at that time to determine if payments made by a taxpayer subject the taxpayer to the EFT tax payment program.
 4. The Mississippi State Tax Commission will make an annual determination of those taxpayers who will be required to pay a tax electronically based on prior year payment thresholds. The determination as to which taxpayers shall be subject to the remittance provisions of this rule is made by the Mississippi State Tax Commission, on a tax type by tax type basis, and is based on annual payments made to the State Tax Commission during a calendar year.
 5. All taxpayers selected for the EFT program shall participate for a minimum of one year. Persons selected on the basis of prior year tax payments will be contacted by the Mississippi State Tax Commission at their last address of record. Once selected for the EFT requirement, the taxpayer must electronically transmit all payments for that tax type as provided in this rule. The Mississippi State Tax Commission will also review payments on an interim basis to identify additional taxpayers who will be required to make payments in accordance with the procedures stated in this rule.
 6. The State Tax Commission will provide the selected taxpayers with forms necessary for registering to make payments for the taxes through EFT. The State Tax Commission will provide the taxpayers with instructions and procedures for paying the taxes through EFT.
 7. The State Tax Commission will provide technical assistance and guidance to the taxpayers concerning the payment of taxes through EFT. An EFT hotline will be available to the taxpayers from 8:00 a.m. through 5:00 p.m. (Central Standard Time) each business day, with the exception of state holidays.

103 Selection of Taxpayers

1. On an annual basis, the State Tax Commission will review the most recent twelve-month period of payment history for a taxpayer, on a tax type by tax type basis, to determine if the payment history requires the taxpayer to make payments for the tax type using EFT. If the taxpayer was not previously required to make payments for the tax type using EFT, a determination will be made as to whether the taxpayer should be required to make payments for the tax type using EFT. If the taxpayer was previously required to make payments for the tax type using EFT, a determination will be made as to whether the taxpayer should continue to be required to make payments for the tax type using EFT.
2. On an interim basis, the State Tax Commission will review payment transactions, on a tax type by tax type basis, to identify those transactions which equal or exceed the threshold amount. Taxpayers who were not previously selected as being required to make payments for a tax type using EFT and who make payments in amounts equal to or in excess of the threshold amount will be required to use EFT for the tax type.

104 Notification of Taxpayers

1. Prior to the date of the first required payment, the State Tax Commission will mail a written notice to all taxpayers selected in the annual review of transactions informing them that they are required to make payments for a tax type using EFT. The notice will identify the tax types to be paid using EFT; will provide instructions pertaining to the payment methods available to the taxpayer; and will provide the taxpayer with the form "Registration Application For Electronic Funds Transfer."
2. The taxpayer will be required to return a properly and fully completed registration application to the State Tax Commission for each tax type the taxpayer was selected to pay using EFT or will provide a written statement explaining the reason the taxpayer should be exempted from the requirement to make payments for a tax type using EFT. The taxpayer will use the registration application to make an election as to which payment method the taxpayer will use. A taxpayer who elects to use the ACH Credit payment method in lieu of the ACH Debit payment method must file a written request with the registration application to use the ACH Credit method. The request must state the reason for requesting the ACH Credit payment method.
3. If the State Tax Commission receives no response from the taxpayer within ten (10) days, the State Tax Commission will provide the taxpayer with a second notice, utilizing certified mail. No response on the part of the taxpayer will subject the taxpayer to all applicable penalties, interest and loss of applicable discount, upon the taxpayer making a payment equal to or in excess of the threshold amount for that period.
4. Upon substantiation by the taxpayer to the satisfaction of the State Tax Commission that the taxpayer will not be making payments for a tax type equal to or in excess of the threshold amount for the period, the department shall waive the requirement to make payments for the tax type by EFT. If the taxpayer subsequently makes a non-EFT payment, in an amount equal to or in excess of the threshold amount for the period the taxpayer was previously selected to make payments using EFT, the taxpayer may be subject to all applicable penalties, interest, and loss of discounts.

105 Registration of Taxpayers

1. The taxpayer shall properly and fully complete the form "Registration Application For Electronic Funds Transfer", provided by the State Tax Commission, and return the registration application to the State Tax Commission by the date specified by the State Tax Commission. Pertinent taxpayer information provided by the application will be recorded and provided to the Data Collection Center. The information which may be required to be provided includes:
 - a. Taxpayer name
 - b. Taxpayer address
 - c. Tax type
 - d. Tax code / account number
 - e. Contact person - name and title
 - f. Contact person – address
 - g. Contact person - telephone number
 - h. Bank name
 - i. Bank address
 - j. Bank transit / routing number
 - k. Bank account number

- l. Signature of person authorized to sign checks
 - m. Written verification from the taxpayer's bank confirming the bank routing and transit number and the bank account number of taxpayer
 - n. Other information as deemed necessary by the State Tax Commission to administer Mississippi Code 27-3-81
2. Upon receipt of taxpayer information from the Mississippi State Tax Commission, the Data Collection Center shall assign a confidential access code to the taxpayer which will be used by the taxpayer to communicate payment information to the Data Collection Center. The access code shall be provided to the taxpayer prior to the date the first required payment is due under the EFT program.
 3. A taxpayer must provide at least a 30 day written notice of any change of information required by submitting a revised "Registration Application For Electronic Funds Transfer" to the State Tax Commission.

106 Payment Alternatives

1. The ACH Debit payment method will be the primary method used by taxpayers to make payments for a tax type using EFT. The ACH Credit method is a payment method available only to taxpayers with permission of the State Tax Commission. Fedwire is not an EFT payment method alternative available to taxpayers. Fedwire is used only on an emergency basis with prior authorization by the Mississippi State Tax Commission.
2. The State Tax Commission will grant taxpayers permission to use the ACH Credit method on a case by case basis. A taxpayer who requests permission to use the ACH Credit method must submit a written request to the State Tax Commission, which demonstrates the existence of a valid business operational reason for using the ACH Credit payment method in lieu of the ACH Debit payment method. A taxpayer who is already using the ACH Credit method to pay vendors, and is already successfully using the ACH Credit method to pay taxes for other jurisdictions is deemed to have a valid business reason for using the ACH Credit method to make payments for Mississippi taxes.
3. The Tax Commission reserves the right to revoke the ACH Credit method payment privilege of any taxpayer for the following reasons:
 - a. Failure to consistently transmit error-free payments
 - b. Substantial variation from the requirements and specifications of these rules
 - c. Failure to make timely EFT payments or to provide timely payment information
 - d. Failure to provide the addenda record, required by these rules, with the EFT payment

107 Procedures for Payment ACH Debit

1. Taxpayers who elect to use the ACH Debit payment method in making EFT payments for tax types shall use the following procedures in communicating payment information to the Data Collection Center.
2. Prior to contacting the Data Collection Center the taxpayer will record the following information to transmit to the Data Collection Center:
 - a. Tax payment amount
 - b. Tax period covered
 - c. Tax type

- d. The taxpayer will compute the verification code. See definition for verification code.
3. The taxpayer must report payment information to the Data Collection Center no later than 3:30 p.m. (Central Time) on the business day before the due date of the payment. The Data collection Center must be called, using the specified toll-free number, during the call-in period specified in the detailed instructions provided to taxpayers. The Tax Commission will bear the costs of processing EFT payments through the Data Collection Center. Communication by the taxpayer during the call-in period is mandatory to assure the timely posting of the taxpayer's payment on the following business day.
4. The Data Collection Center will receive the information provided by the taxpayer and will compute the verification code. If the exchange of information is correct, the verification code computed by the Data collection Center will be identical to the verification code computed by the taxpayer.
5. If the verification code computed by the Data Collection Center is identical to the verification code computed by the taxpayer, the Data Collection Center will confirm this to the taxpayer. The taxpayer will record the date and time of the call as an audit trail of the payment.
6. If the verification code is not identical, the Data Collection Center will ask the taxpayer to provide the information again, until it can be verified that the exchange of information is correct.
7. Successful completion of the call to the Data Collection Center will fulfill the taxpayer's obligation for initiating an ACH Debit transaction.
8. The payment of taxes through EFT does not relieve the taxpayer from filing the appropriate tax returns or applicable information returns required by the Tax Commission. Taxpayers must complete any EFT payment indicators on the form. If an EFT payment indicator is not available, the taxpayers must boldly and legibly indicate on the face of the return that payment was made using EFT. The required returns are filed in the normal manner.

108 Procedures for Payment ACH Credit

1. The State Tax Commission will allow certain taxpayers to use the ACH Credit payment method. It is the intent of the Tax Commission to examine each taxpayer's compliance with the requirements of this rule. If a taxpayer has elected the ACH Credit payment method but repeatedly fails to correctly complete the payment transactions in accordance with the procedures stated in these rules, the State Tax Commission may in its discretion require the taxpayer to make future payments by the ACH Debit payment method.
2. To assure the timely receipt of payment for a tax type, a taxpayer must ensure that the financial institution originating the transaction does so in sufficient time for the payment to be deposited as immediately available funds to the State Treasury on or before the appropriate due date of payment.
3. All ACH Credit transactions must utilize the NACHA CCD+ entry with a TXP Banking Convention addenda record. The TXP Banking Convention addenda record requires the following information:
 - a. Taxpayer's identification number
 - b. Tax type code

- c. Tax period end date
 - d. Payment type
 - e. Amount of payment
4. If the taxpayer repeatedly fails to provide the State Tax commission with the required addenda record which conforms to the requirements of the State Tax Commission, the taxpayer may be required to use the ACH Debit method.
 5. A taxpayer who elects to use the ACH Credit payment method will first determine the total amount of tax due with respect to the tax type for which the payment is being made. At a time arranged between the taxpayer and taxpayer's financial institution, the taxpayer will provide the taxpayer's financial institution with the information necessary and TXP Banking Convention. A timely ACH Credit transaction will be initiated and posted as immediately available funds to the State of Mississippi's bank account on or before the due date of the payment.
 6. Taxpayers electing to use the ACH Credit payment method are responsible for coordinating with their financial institutions to ensure that ACH Credit payments are timely initiated. The impact of prescribed ACH time frames and nightly cycles as well as the impact of weekends and holidays must be considered.
 7. Taxpayers must file the required returns. Any EFT payment indicators on the form must be completed. If an EFT indicator is not available, taxpayers must boldly and legibly print on the face of the return that payment was made using EFT. Tax returns for which payment was made using EFT must be mailed to the following address:
 - Mississippi State Tax Commission
 - EFT Unit
 - P. O. 960
 - Jackson, MS 39205

109 Payment Procedures Wire Transfers

1. Taxpayers who, due to circumstances beyond their reasonable control, are unable to initiate a timely payment of tax through the ACH Debit method may request the State Tax Commission's permission, on an exception basis, to transmit payments of tax to the State Treasurer's account via wire transfer. Prior to initiating the transmission, the taxpayer must contact the State Tax Commission. The taxpayer must present the emergency situation which prevents timely compliance under the ACH Debit method and request verbal approval to wire transfer the tax payments in question to the State Treasury.
2. Taxpayers who are granted verbal approval to use wire transfer as an exception to the ACH Debit method will be given specific instructions regarding the payment information that must accompany the wire transfer.
3. All wire transfers must be accompanied by an addenda record, in the format specified by the State Tax Commission, which may include the following information:
 - a. Taxpayer's account number
 - b. Tax type
 - c. Document type
 - d. Amount of payment
 - e. Tax period

4. Wire transfers which are not received by the State Treasury on or before the due date of the transmitted payments of tax will constitute late payment and the applicable late filing penalties, interest, and loss of collection allowance shall apply.
5. As originator of this ACH transaction, the cost of each Fedwire will be paid by the taxpayer.

110 Requirements for Filing Returns

1. The requirement to use EFT to make tax payments does not change any current filing requirements for the tax returns. If the EFT payment is not timely made or the tax return required is not filed by the due date, the provisions for late payment penalties, late filing penalties, interest, and loss of applicable discount shall apply under the provisions of the appropriate revenue laws of the Mississippi Code of 1972, unless otherwise provided in this rule.
2. Most return forms will have an EFT payment indicator for the taxpayer to complete. In the absence of an EFT payment indicator, taxpayers must boldly and legibly print on the face of the return that payment was made using EFT.
3. The filed return and EFT payment shall be coordinated by the State Tax Commission.
4. Tax returns for which payment was made using EFT must be mailed to the following address:

Mississippi State Tax Commission
EFT Unit
P. O. Box 960
Jackson, MS 39205

111 Penalties for Noncompliance

1. The provisions of the Mississippi Code of 1972 shall govern the administration of any tax, interest, or penalty assessed due to late EFT payments.
2. No specific additional penalty provisions are provided concerning compliance with the EFT tax payment requirement. Rather, the general provisions for all taxpayers apply. To avoid the imposition of penalties, timely filing of the tax return along with timely payment in accordance with the provisions of the Mississippi Code of 1972 and the provisions of this rule is required.
3. Failure of a taxpayer to respond to the notification from the State Tax Commission concerning the required use of EFT to make payments for a tax type or failure to timely or properly make EFT payments in accordance with this rule shall subject the taxpayer to applicable penalty, interest, and loss of discount, as provided by the Mississippi Code of 1972 for delinquent or deficient tax payments. If payment is made for a tax type for which a taxpayer was selected to make payments using EFT, and the payment is made in a method which is not in accordance with the procedures stated in this rule, a delinquent payment penalty for that tax type as specified in the Mississippi Code of 1972 may be assessed. In addition to any penalty which may be imposed, interest shall be added to the amount of tax due from the due date of the tax payment to the date that the funds become available to the State Treasury. It is presumed, in the absence of evidence to the contrary, that said funds will be available on the third business day following receipt of payment.

4. Penalties may be waived when the circumstance causing delinquency are beyond the control of the taxpayer. Errors made by the Data Collection Center, the State Treasury or the State Tax Commission which result in a late payment by the taxpayer shall not subject the taxpayer to late payment penalties, interest, or loss of applicable discount for the late payment.

5. When a taxpayer uses the ACH Debit payment method, the State of Mississippi's bank is the originating bank and is responsible for the accuracy of the transmission. If the taxpayer timely initiated the ACH Debit transaction, received a reference number, and can show adequate funds were available in the bank account, no penalties shall apply with respect to the payment if the transaction was not properly completed.

6. When a taxpayer uses the ACH Credit payment method, the taxpayer's bank is the originating bank and the taxpayer is primarily responsible for the accuracy and proper completion of the transaction. The taxpayer must show timely initiation for the CCD+ entry and the required TXP Banking Convention addenda record, that there were sufficient funds in the account and that the financial institution properly completed the transaction in a timely manner in order to prove timely compliance. If the taxpayer can make this showing, then no penalties shall apply with respect to the payment if the transaction was not properly completed.

7. A taxpayer who is required to make EFT payments and who is unable to make a timely payment because of system failures within the Automated Clearing House System, which are beyond the taxpayer's control, shall not be subject to penalty or interest for late payment or loss of applicable discount.

112 Voluntary Use of EFT to Pay Taxes

1. Those taxpayers who are not required to make EFT payments for any tax type may request permission from the State Tax Commission to make EFT payments for a tax type that is being implemented by the Mississippi State Tax Commission.

2. Taxpayers making a voluntary election to make EFT payments for a tax type are subject to the provisions of this rule as are those taxpayers who are required to make EFT payments.

3. Written applications for voluntary participation in the EFT program must be filed with the Mississippi State Tax Commission at least 30 days prior to the due date of the payment(s) in question by filing form "Registration Application For Electronic Funds Transfer." Once accepted for voluntary participation in the EFT program, taxpayer must remain in the program for one year. Taxpayers may terminate voluntary participation, after one year, by filing a written request for termination with the Mississippi State Tax Commission at least 30 days prior to the due date of the last EFT payment.

4. Requests for voluntary inclusion and termination notices must be directed to:

Mississippi State Tax Commission
EFT Unit
P. O. Box 960
Jackson, MS 39205

113 Grace Periods during Implementation

During the early stages of implementing this Act, not to exceed three months from the effective dates of implementation, the State Tax Commission may, at its discretion,

extend a grace period of no more than two business days for taxpayers to resolve unexpected problems which may arise in financial institution, Federal Reserve facilities, or the Automated Clearing House system, resulting in the taxpayers making late payments. To qualify for a grace period, the taxpayer must demonstrate that a good faith attempt was made to comply with the provisions of these rules, that due diligence was exercised to initiate the payment timely and correctly, and that sufficient funds were available in the taxpayer's bank account, or that circumstances beyond the taxpayer's reasonable control prevented compliance by the required date.

114 Change in Taxpayer Information

A taxpayer must provide at least 30 days written notice of any change of information required by submitting a revised "Registration Application For Electronic Funds Transfer" to:

Mississippi State Tax Commission
EFT Unit
P. O. Box 960
Jackson, MS 39205

115 Legal Holidays

1. Taxpayers who are required to remit tax payments through EFT must initiate the transfer so that the amount due is deposited as collected funds to the State Treasurer's account on or before the due date under the appropriate revenue law. If a tax due date falls on a Saturday, a Sunday, a legal holiday as defined in the Mississippi Code of 1972, or a legal holiday of the jurisdiction in which the taxpayer's financial institution is located, the deposit by electronic funds transfer is required on or before the preceding banking day. If the day on which the taxpayer is required to initiate the ACH Debit transfer falls on a Saturday, Sunday, or a business or banking holiday, the taxpayer must initiate the transaction on the preceding business day.

2. a. The Mississippi State Tax Commission is closed for the following holidays:

- i. New Year's Day January 1
- ii. Martin Luther King's Birthday 3rd Monday in January
- iii. President's Day 3rd Monday in February
- iv. Confederate Memorial Day Last Monday in April
- v. National Memorial Day Last Monday in May
- vi. Independence Day July 4
- vii. Labor Day 1st Monday in September
- viii. Veterans' Day November 11
- ix. Thanksgiving Day 4th Thursday in November
- x. Christmas December 25

b. Provided, however, that in the event any holiday shall fall on Saturday or Sunday, then the preceding Friday or the following Monday shall be a legal holiday. Additional days at Thanksgiving and Christmas are often declared holiday by proclamation by the Governor of Mississippi.

116 (Reserved)

117 (Reserved)

118 (Reserved)

119 (Reserved)

120 (Reserved)

Chapter 03 Penalties Related to Unofficial Tax Forms or Misuse of Tax Forms

100 The Mississippi State Tax Commission, (hereinafter referred to as "State Tax Commission"), is in the process of implementing a new imaging system. Only tax forms printed by and issued by the State Tax Commission can be read by the new system. All taxpayers must use the proper official form. Any reproduction of an official form must be printed with "dropout ink" and approved by the State Tax Commission.

100.01 **Exception:** The taxpayer may file the returns printed from a provider tax preparation software package if the forms printed from the packager have been previously approved by the State Tax Commission. If the forms printed from the package have been approved, then the provider should have a letter from the State Tax Commission approving these forms. These forms should be printed by a laser printer or laser quality printer.

101 Taxpayers

It is the taxpayer's responsibility:

1. To file their return on the original form, or
2. To require their tax preparer to either use the official form or use a tax preparation software package that generates the form(s) approved by the State Tax Commission, or
3. To file their return on an approved provider form printed in dropout ink, or
4. To file their return using a tax preparation software package that generates the form(s) approved by the State Tax Commission.

101.01 In all cases above, the taxpayer must file the original return with the original signature. Photocopies are not acceptable.

102 Tax Preparers

It is the tax preparer's responsibility:

1. To prepare each taxpayer's return on the original form, or
2. To use an approved provider form printed in dropout ink, or
3. To use a tax preparation software package that generates the form(s) approved by the State Tax Commission.

102.01 In all cases above, the tax preparer must file the original return with an original signature. Photocopies are not acceptable.

103 Tax Preparation Software Providers Specific Substitute Forms Guidelines are available for forms that will be generated by tax preparation software or printed forms with dropout ink. The guidelines contain information such as typeset, bar code placement, positioning of the tax data, and other similar information. These guidelines have been furnished to all tax preparation software providers with their package of the official forms. Copies of the *Mississippi Guidelines for Providers of Substitute Forms* are available on request.

103.01 It is the provider's responsibility:

1. To comply with the Substitute Forms Guidelines, and
2. To obtain written approval from the State Tax Commission for all forms printed and/or distributed, as well as forms that will be generated by tax preparation software, and
3. To ensure that all forms actually generated by the software match the for by the State Tax Commission.

103.02 NOTE: A penalty of Twenty-five Dollars (US\$25.00) may be imposed for each form in each return not in compliance with this rule whether said form is a photocopy or an unapproved form. This penalty may be imposed on the taxpayer, tax practitioner, and/or provider.

104 Photocopies

Photocopies will only be accepted in limited circumstances as follows:

1. If a taxpayer must file a duplicate or their return after the original filing, a photocopy is acceptable. A letter clearly stating that it is a duplicate and the reason the original is not available must be attached.
2. For income tax returns (individual returns, resident and nonresident, partnership returns, fiduciary returns, corporate returns and estate tax returns), the primary form on which the taxpayer endorses their return must comply with Section B of this Rule. Photocopies (including photocopies of some federal forms) may be used as attachments only if specifically allowed in the instructions that accompany each form. For example, the State Tax Commission may accept a photocopy of the Federal Schedule A of Itemized Deductions of the Federal Balance Sheet attached to the corporate return as an attachment.

105 (Reserved)

106 (Reserved)

107 (Reserved)

108 (Reserved)

Chapter 04 Electronic Filing and Electronic Payments

100 Section 27-3-83, Mississippi Code of 1972 provides the State Tax Commission may specify by rule or regulation the manner and method in which tax returns, and other tax

documents and information may be filed with the commission. Such filings may be accomplished by submitting the forms or documents manually or by submitting them electronically.

- 101 Section 27-3-81, Mississippi Code of 1972, provides the State Tax Commission, consistent with the cash management policies of the State Treasurer, may require any person owing more than \$20,000.00 in connection with any return, report or other document filed with the commission to remit any such tax liability by any such means established by the Tax Commission, with the approval of the State Treasurer, which ensures the availability of such funds to the state on the date of payment. The purpose of this rule is to:
1. Set forth the Tax Commission's requirements for the electronic filing of tax returns and related documents.
 2. Require certain taxpayers and/or their agents to file tax returns electronically with the Tax Commission.
 3. Provide that persons filing returns electronically with the Tax Commission make their payments of taxes by electronic means.
- 102 On the effective date of this rule, the State Tax Commission, will begin implementation of an electronic filing program for tax returns and related documents and will require certain taxpayers and/or their agents to submit their tax returns and related documents electronically and to make any payments due electronically.
- 103 The State Tax Commission will make an annual determination of those taxpayers and/or agents who shall be required to file their tax returns and related documents electronically and to make any payments due electronically. Such determination shall be made based upon the monthly or quarterly volume of returns being filed, the volume of supporting documentation required to be filed with each return or the annual payments made to the commission for each tax type.
- 104 The State Tax Commission will notify, in writing, those taxpayers or agents who shall be required to file tax returns and related documents electronically and to make payments electronically. With respect to persons required to file by Electronic Data Interchange (EDI), such notification shall be made at least one hundred and eighty (180) days in advance of any due date. With respect to persons required to file by other electronic means, such notification shall be made at least ninety (90) days in advance of any due date.
- 105 Any taxpayer or taxpayer's agent after securing the commission's approval may voluntarily file tax returns and related documents electronically. Such taxpayers or taxpayer's agents, except for those filing Individual Income Tax, shall make any payments due electronically.
- 106 The State Tax Commission will specify the manner and method in which the electronic filing and in which the electronic payment shall be made for each type of tax administered by the commission. In addition, the State Tax Commission shall provide

the taxpayer and/or their agent with the necessary instructions and procedures for electronic filing and electronic payment of taxes. Such instructions and procedures will be provided to the taxpayer and/or their agent in a reasonable time frame in advance of any due dates as to allow compliance with filing requirements.

- 107 The identification of a taxpayer by name and identifying number on a return or report filed electronically with the State Tax Commission shall be deemed to be the authorized signature of the taxpayer on that return or report.
- 108 The taxpayers or their agents shall transmit their returns and other documents to the State Tax Commission's internet service provider (ISP) or value added network (VAN) as specified by the State Tax Commission. The State Tax Commission shall transmit an acknowledgement when a successfully transmitted return or report has been received. The absence of such acknowledgement shall be notice to the taxpayer and its agent that the report or return was not received. Any electronic funds transfer used to pay tax amounts due for a return or report electronically filed shall not be considered a completed payment by the taxpayer until the funds are properly credited to the account of the State Tax Commission.
- 109 (Reserved)

Chapter 05 Collection Procedures for Levy of Monies

- 100 Purpose
This regulation is promulgated to established a uniform method and procedure for the administration of Distress Warrants for the Levy of Monies Owed to Taxpayer(s) issued by the Chairman and Commissioner of Revenue and it is intended to apply to all such Distress Warrants issued by the Chairman and Commissioner of Revenue regardless of the type of tax involved in the Distress Warrant. This regulation is promulgated to supplement all other rules and regulations adopted by the Mississippi State Tax Commission and/or the Chairman and Commissioner of Revenue for the various taxes for which a Distress Warrant for the Levy of Monies Owed to Taxpayer(s) can be issued.
- 101 Distress Warrant for the Levy of Monies Owed to Taxpayer(s)
Pursuant to Miss. Code Ann. S27-3-33 (4), as amended, warrants issued by the Chairman and Commissioner of Revenue of the Mississippi State Tax Commission for the collection of taxes shall be used to levy on salaries, compensation or other monies due the delinquent taxpayer. Such warrants for the levy of monies will be issued in the same manner as any warrant for the collection of taxes is issued by the Chairman and Commissioner of Revenue of the Mississippi State Tax Commission. It shall be issued under the official seal of The Mississippi State Tax Commission, and only after a tax lien has been enrolled on the judgment roll of the county wherein the taxpayer resides or the monies are to be levied. After issuance, the warrant shall be served by mail or by hand delivery of said warrant by an agent of the Mississippi State Tax Commission to the person or entity named therein as garnishee. The agent shall execute a Proof of Service indicating on what date and upon whom the warrant was served. This Proof of Service is

to be sent by the agent to the Mississippi State Tax Commission where it is to be retained as a part of the file on said warrant.

102 Answer of the Person or Entity Served with Distress Warrant for the Levy of Monies Owed to Taxpayer(s)

Within thirty (30) days from the date of service of the Distress Warrant for the Levy of Monies Owed to Taxpayer(s), the person or entity served shall file with the Mississippi State Tax Commission an Answer to said distress warrant for the levy of monies wherein the person or entity answers, under oath, the questions set forth on said Distress Warrant for the Levy of Monies Owed to Taxpayer(s). This answer may be submitted by one of the methods described below.

1. Submit by mail or facsimile to the Levy Section of the Mississippi State Tax Commission the prepared form entitle Answer to Distress Warrant for the Levy of Monies Owed to Taxpayer(s).

2. Submit by electronic mail (e-mail) to the Levy Section of the Mississippi State Tax Commission the completed Levy Response form. Prior to using this method of answering the Distress Warrant for the Levy of Monies to Taxpayer(s), the Levy Response Agreement Request must be submitted and approved.

a. For entities who receive twenty five (25) or more levies in a delivery, a document containing levy information will be e-mailed to the entity to be completed and returned by e-mail to the Levy Section of the Mississippi State Tax Commission.

b. For entities who receive less than twenty five (25) levies in a delivery, single answer e-mails should be submitted to the Levy Section of the Mississippi State Tax Commission.

103 Responsibility of Persons or Entity Served to Withhold and Remit Monies Levied by Distress Warrant.

It is the responsibility of the person or entity served with a Distress Warrant for the Levy of Monies Owed to Taxpayer(s) to remit to the Mississippi State Tax Commission monies levied by the Distress Warrant. The extent to which monies are levied by the Distress Warrant are governed by garnishment laws of this State and will vary depending on the type of indebtedness for which said monies are owed to the taxpayer(s) and the existence of a prior warrant or garnishment. The extent to which monies are levied and required to be remitted under a Distress Warrant is as follows:

1. Wages, Salary and Other Employment Compensation

A Distress Warrant For The Levy Of Monies Owed To Taxpayer(s) being issued by the Chairman and Commissioner of Revenue for the Mississippi State Tax Commission for the collection of state taxes is excepted from the restrictions contained in Miss. Code Ann. S85-3-4 (1) and (2), as amended, and 15 U.S.C. S1673(a), as amended, on attachment, execution, or garnishment of wages, salaries or other employment compensation. Without these restrictions, the entire disposable earnings of a taxpayer are subject to being levied. Recognizing the hardship that would result if a person's entire disposable earnings are levied for an extended period of time, it is hereby determined that in most cases the amount of wages, salaries or other employment compensation owed to a delinquent taxpayer which is to be levied

and withheld under a Distress Warrant should be less than the entire disposable earnings, and unless otherwise determined and directed as authorized under subdivision (2) below, the amount of wages, salary or other employment compensation owed to a delinquent taxpayer which is to be levied by Distress Warrant for the Levy of Monies Owed to Taxpayer(s) is hereby limited to the following:

a. Wages, Salary or Other Employment Compensation Owed during First Thirty Days after Service.

Monies owed to the defaulting taxpayer(s) for wages, salaries or other employment purposes are not bound by the Distress Warrant for the first thirty (30) days after service of the Distress Warrant, and such monies which become due to the defaulting taxpayer before or during this initial thirty (30) day period for wages, salary or other employment compensation are to be paid over to the defaulting taxpayer(s).

b. Wages, Salary or Other Employment Compensation Owed after Initial Thirty Days Period.

For all monies for indebtedness for wages, salary or other employment compensation which becomes due to the defaulting taxpayer(s) after the initial thirty (30) day period, the employer shall withhold twenty-five percent (25%) of the defaulting taxpayer(s)' disposable earnings per pay period until the Distress Warrant for the Levy of Monies Owed to Taxpayer(s) is satisfied. Disposable earnings is that part of the earnings of an individual remaining after the deduction from those earnings of any amounts required to be withheld by law.

c. Wages, Salary or Other Employment Compensation Owed for the Final Pay Period Where Employment Is Terminated.

If the defaulting taxpayer leaves the employment of the person or entity served with a Distress Warrant For The Levy Of Monies Owed To Taxpayer(s) after the initial thirty (30) day period from service of the warrant, the employer shall withhold one hundred percent (100%) of the defaulting taxpayer(s) final disposable earnings or such lesser amount that will satisfy the warrant.

2. Reservation of Authority to Increase or Decrease the Amount of Wages, Salary or Other Employment Compensation Levied by Distress Warrant

The authority to increase or decrease the amount or percentage of wages, salary and other employment compensation levied under a Distress Warrant for the Levy of Monies Owed to Taxpayer(s) from that set out in subsection (1) above is hereby reserved by the Chairman and Commissioner of Revenue. In such cases where a different amount or percentage of disposable earnings from that set out in subsection (1) above is determined to be levied and withheld under a distress warrant, the Distress Warrant for the Levy of Monies Owed to Taxpayer(s) issued to levy such wages, salary and other employment compensation in a different amount or percentage from that set out in subsection (1) above shall clearly set out the amount or percentage of disposable earnings to be levied and withheld under said Distress Warrant.

3. Indebtedness Other Than For Wages, Salary or Other Employment Compensation

Monies owed to the defaulting taxpayer(s) for indebtedness other than for wages, salary or other employment compensation are levied and bound by a Distress Warrant for the Levy of Monies Owed to Taxpayer(s) at the time that this warrant is served up to the amount of the warrant. The person or entity served is required to withhold all monies owed to the defaulting taxpayer(s) at the time of service of the warrant for such non-employment indebtedness up to the amount of the warrant. In regard to such non-employment indebtedness, a Distress Warrant for the Levy of Monies Owed to Taxpayer(s) also binds and requires to be withheld any monies for such indebtedness which becomes due to the defaulting taxpayer(s) after service of the warrant, but before the expiration of the thirty (30) day period during which the person or entity served has to answer the warrant to the extent that monies previously bound under the warrant are not sufficient to satisfy the warrant. The aggregate of all monies bound and withheld under the warrant, whether for non-employment indebtedness which was due at the time of service or which became due during the first thirty (30) days after service, shall not exceed the amount of the warrant.

4. Multiple Warrants, Garnishments or Orders of Withholding

If the person or entity served by a Distress Warrant for the Levy of Monies Owed to Taxpayer(s) is subject to multiple warrants and/or garnishments of the same defaulting taxpayer(s), the order in which such warrants and garnishments are to be withheld and satisfied is to be governed by Miss. Code Ann. S11-35-24 with the warrant being treated as if it is a garnishment. This priority does not, however, apply to an Order of Withholding under Miss. Code Ann. S93-11-111 in regard to the defaulting taxpayer(s), since, by statute, such Order of Withholding is not considered to be a garnishment. If the person or entity served with the Distress Warrant for the Levy of Monies Owed to Taxpayer(s) is at the time of service of the warrant or at some later time required to withhold from defaulting taxpayer(s)' wages under an Order of Withholding for child support, the full amount of the monies to be withheld under the warrant is still to be withheld per pay period to the extent that there are disposable earnings remaining after the monies under the Order of Withholding have been withheld. The person or entity served is to withhold first for the amount under the Order of Withholding and then for the amount under the warrant. In such cases, the amount of disposable earnings which is levied under the warrant is to be determined as with any other warrant without any deduction or adjustment for the monies paid under the Order of Withholding. The amount resulting from this computation will be the amount to be withheld and remitted under the warrant unless it is greater than the difference between the total amount of disposable earnings and the amount to be withheld under the Order of Withholding in which case this difference will be the amount to be withheld and remitted.

5. Remittance of Monies Bound under Distress Warrants for the Levy of Monies Owed to Taxpayer(s)

- a. Monies Withheld From Wages, Salary or Other Employment Compensation. Unless otherwise authorized, all monies from wages, salary or other employment compensation which are bound and levied by a Distress Warrant for the Levy of Monies Owed to Taxpayer(s) shall be remitted to the Mississippi State Tax Commission within thirty (30) days from the end of the pay period for which such monies were withheld from disposable earnings of the defaulting taxpayer(s).

b. Monies Levied for Non-Employment Indebtedness

Unless otherwise authorized, all monies for non-employment indebtedness which is bound and levied by a Distress Warrant for the Levy of Monies Owed to Taxpayer(s) shall be remitted to the Mississippi State Tax Commission within thirty (30) days from the date that the answer to the Distress Warrant for the Levy of Monies Owed to Taxpayer(s) is due.

c. Payments of Monies Levied under Distress Warrants to Reflect Taxpayer(s)' Name, Warrant Number and Control Number

All payments to the Mississippi State Tax Commission of monies levied under a Distress Warrant for the Levy of Monies Owed to Taxpayer(s) shall reflect the name of the defaulting taxpayer(s), the warrant number and the control number of the warrant.

d. Request for a Change in the Time Period for Payment

If a person or entity required to remit monies under a Distress Warrant for the Levy of Monies Owed to Taxpayer(s) desires a different time period for the remittance of monies from that set out in subsections (a) and (b) above, such person or entity can make a request to the Chairman and Commissioner of Revenue for a change in this period. Such a request shall be made in writing and shall include therein the reasons for requesting the change. Upon consideration of this request, the Chairman and Commissioner of Revenue or his designee shall advise the requesting person or entity as to whether the request is granted.

104 Personal Liability of Person or Entity Served with Distress Warrant for the Levy of Monies Owed to Taxpayer(s)

If a person or entity served with a Distress Warrant for the Levy of Monies Owed to Taxpayer(s) fails to withhold and/or remit to the Mississippi State Tax Commission the monies bound and levied by said warrant, the person or entity served shall be personally liable to the Mississippi State Tax Commission for said monies. If after expiration of the time period for the remittance of the monies bound and levied under a Distress Warrant for the Levy of Monies Owed to Taxpayer(s), the Chairman and Commissioner of Revenue finds that the person or entity served with the warrant did not remit to the Mississippi State Tax Commission all monies bound, levied and required to be remitted under the warrant, the Chairman and Commissioner of Revenue shall assess said person or entity for the taxes, penalties, interest and cost included in the warrant in the amount of the monies which were bound and levied under the warrant, but which were not remitted, and shall therein advise the person or entity served of his personal liability for said monies, demand payment of same, and further advise person or entity served that levy and collection process may be issued against him for said liability. If payment of this liability is not forthcoming, the Commissioner may issue, in the same manner as other taxes, levy and collection process against the person or entity served to collect this personal liability for monies which should have been remitted under the warrant.

105 (Reserved)

106 (Reserved)

107 (Reserved)

108 (Reserved)

109 (Reserved)

110 (Reserved)

35.1.05 updated effective January 1, 2007.