

By: Senator(s) Nunnelee

To: Finance

SENATE BILL NO. 2113

1 AN ACT TO AMEND SECTION 27-7-9, MISSISSIPPI CODE OF 1972, TO
2 DELETE THE REQUIREMENT THAT CERTAIN TRANSACTIONS ENTERED INTO BY
3 CORPORATIONS BE ADJUSTED OR ELIMINATED FOR INCOME TAX PURPOSES; TO
4 AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN
5 PROVISIONS REGARDING THE TREATMENT OF CERTAIN INTEREST EXPENSE AS
6 A BUSINESS DEDUCTION; AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 27-7-9, Mississippi Code of 1972, is
9 amended as follows:

10 27-7-9. (a) Except as provided in Sections 27-7-95 through
11 27-7-103, determination of amount of gain or loss.

12 (1) Computation of gain or loss. The gain from the
13 sale or other disposition of property shall be the excess of the
14 amount realized therefrom over the adjusted basis provided in
15 subsection (c) for determining gain, and the loss shall be the
16 excess of the adjusted basis provided in subsection (c) for
17 determining loss over the amount realized.

18 (2) Amount realized. The amount realized from the sale
19 or other disposition of property shall be the sum of any money
20 received plus the fair market value of the property (other than
21 money) received.

22 (3) Installment sales. Nothing in this section shall
23 be construed to prevent (in the case of property sold under
24 contract providing for payment in installments) the taxation of
25 that portion of any installment payment representing gain or
26 profit in the year in which such payment is received.

27 (b) Recognition of gain or loss. Except as otherwise
28 provided in this section, on the sale or exchange of property the
29 entire amount of the gain or loss, determined under subsection

30 (a), shall be recognized.

31 (c) Adjusted basis for determining gain or loss.

32 (1) In general. The adjusted basis for determining the
33 gain or loss from the sale or other disposition of property,
34 whenever acquired, shall be the basis determined under subsection
35 (d) adjusted as provided in subsection (e).

36 (2) Bargain sale to a charitable organization. If a
37 deduction is allowed under Section 27-7-17 (relating to charitable
38 contributions) by reason of a sale, then the adjusted basis for
39 determining the gain from such sale shall be that portion of the
40 adjusted basis which bears the same ratio to the adjusted basis as
41 the amount realized bears to the fair market value of the
42 property.

43 (d) Basis of property.

44 (1) Property acquired after March 16, 1912. The basis
45 for ascertaining the gain derived or the loss sustained from the
46 sale or other disposition of property, real, personal or mixed,
47 shall be, in the case of property acquired after March 16, 1912,
48 the cost of such property, except as otherwise provided in this
49 subsection.

50 (2) Inventory property. If the property should have
51 been included in the last inventory, the basis shall be the last
52 inventory value thereof.

53 (3) Property acquired by gift. In the case of property
54 acquired by gift after January 1, 1936, the basis shall be the
55 same as that which it would have in the hands of the donor or the
56 last preceding owner by whom it was not acquired by gift. If the
57 facts necessary to determine such basis are unknown to the donee,
58 the commissioner shall, if possible, obtain such facts from such
59 donor, or last preceding owner, or any other person cognizant
60 thereof. If the commissioner finds it impossible to obtain such
61 facts, the commissioner shall establish a basis for the property
62 from the best information available. In the case of property
63 acquired by gift on or before January 1, 1936, the basis for
64 ascertaining gain or loss from the sale or other disposition
65 thereof shall be the fair market price or value of such property
66 at the time of acquisition.

67 (4) Property acquired by bequests, devises and

68 inheritance. If personal property was acquired by specific
69 bequest, or if real property was acquired by general or specific
70 devise or by intestacy, the basis shall be the fair market value
71 of the property at the time of the death of the decedent. If the
72 property was acquired by the decedent's estate from the decedent,
73 the basis in the hands of the estate shall be the fair market
74 value of the property at the time of the death of the decedent.
75 In all other cases, if the property was acquired either by will or
76 by intestacy, the basis shall be the fair market value of the
77 property at the time of the distribution to the taxpayer. In the
78 case of property transferred in trust to pay the income for life
79 to or upon the order or direction of the grantor, with the right
80 reserved to the grantor at all times prior to his death to revoke
81 the trust, the basis of such property in the hands of the persons
82 entitled under the terms of the trust instrument to the property
83 after the grantor's death shall, after such death, be the same as
84 if the trust instrument had been a will executed on the day of the
85 grantor's death.

86 (5) Property acquired by a transfer in trust. If the
87 property was acquired by a transfer in trust (other than by a
88 transfer in trust by a bequest or devise), the basis shall be the
89 same as it would be in the hands of the grantor, increased in the
90 amount of gain, or decreased in the amount of loss, recognized to
91 the grantor upon such transfer under this section.

92 (6) Property acquired in tax-free exchanges. If the
93 property was acquired upon an exchange described in subsection
94 (f), the basis shall be the same as in the case of the property
95 exchanged, decreased in the amount of any money received by the
96 taxpayer and increased in the amount of gain or decreased in the
97 amount of loss to the taxpayer that was recognized upon such
98 exchange by the terms of this act. If the property so acquired
99 consisted in part of the type of property permitted by subsection
100 (f) to be received without recognition of gain or loss, and in
101 part of other property, the basis provided in this subsection

102 shall be allocated between the properties (other than money)
103 received, and for the purpose of the allocation there shall be
104 assigned to such other property an amount equivalent to its fair
105 market value at the date of the exchange.

106 (7) Property acquired in tax-free distribution. If the
107 property consists of stock or securities distributed to a taxpayer
108 in connection with a transaction described in subsection (f), the
109 basis in the case of the stock in respect of which the
110 distribution was made shall be apportioned, under rules and
111 regulations prescribed by the commissioner, between such stock and
112 the stock or securities distributed.

113 (8) Property acquired in involuntary conversions. If
114 the property was acquired as the result of a compulsory or
115 involuntary conversion described in subsection (f), the basis
116 shall be the same as in the case of property so converted,
117 decreased in the amount of any money received by the taxpayer
118 which was not expended in accordance with the provisions of said
119 subsection determining the taxable status of the gain or loss upon
120 such conversion, and increased in the amount of gain or decreased
121 in the amount of loss to the taxpayer recognized upon such
122 conversion.

123 (9) Property acquired in wash sales. If substantially
124 identical property was acquired in place of stock or securities
125 which were sold or disposed of and in respect of which loss was
126 not allowed as a deduction under Section 27-7-17(d), the basis in
127 the case of property so acquired shall be the basis in the case of
128 the stock or securities so sold or disposed of, except that, if
129 the repurchase price was in excess of the sales price, such basis
130 shall be increased in the amount of the difference, or if the
131 repurchase price was less than the sales price, such basis shall
132 be decreased in the amount of the difference.

133 (10) Property acquired before March 16, 1912. The
134 basis for determining the gain or loss from the sale or other
135 disposition of property acquired before March 16, 1912, shall be:

136 (A) The cost of such property (or in the case of
137 such property as is described in subsection (d)(2) or (4) of this
138 section the basis as therein provided, or in the case of property
139 acquired by gift or transfer in trust, the fair market value of
140 such property at the time of such acquisition); or

141 (B) The fair market value of such property as of
142 March 16, 1912, whichever is greater.

143 In determining the fair market value of stock in a
144 corporation as of March 16, 1912, due regard shall be given to the
145 fair market value of the assets of the corporation as of that
146 date.

147 (e) Adjustments to basis.

148 (1) In general. In computing the amount of gain or
149 loss from the sale or other disposition of property, proper
150 adjustment shall be made for any expenditure, receipt, loss or
151 other item, properly chargeable to capital account since the basis
152 date. The cost or other basis of the property shall also be
153 diminished by the amount of the deductions for exhaustion, wear
154 and tear, obsolescence, amortization, and depletion, which have
155 since the acquisition of the property been allowable in respect of
156 such property whether or not such deductions were claimed by the
157 taxpayer or formerly allowed. In the case of stock, the basis
158 shall be diminished by the amount of distributions previously made
159 in respect to such stock, to the extent provided under this
160 section.

161 (2) Substituted basis. Whenever it appears that the
162 basis of the property in the hands of a taxpayer is a substituted
163 basis, then the adjustments provided in subsection (e)(1) shall be
164 made after first making in respect of such substituted basis
165 proper adjustments of a similar nature in respect of the period
166 during which the property was held by the transferor, donor or
167 grantor, or during which the other property was held by the person
168 for whom the basis is to be determined. The term "substituted
169 basis" as used in this subsection means a basis determined under

170 any provision of this section or under any corresponding provision
171 of a prior Income Tax Law, providing that the basis shall be
172 determined by reference to the basis in the hands of a transferor,
173 donor or grantor, or, by reference to other property held at any
174 time by the person for whom the basis is to be determined.

175 (f) Recognition of gain or loss -- exceptions.

176 (1) Exchange solely in kind.

177 (A) Property held for productive use or
178 investment. No gain or loss shall be recognized if property held
179 for productive use in trade or business or for investment (not
180 including stock in trade or other property held primarily for
181 sale, nor stocks, bonds, notes, choses in action, certificates of
182 trust or beneficial interest, or other securities or evidence of
183 indebtedness or interest) is exchanged solely for property of a
184 like kind to be held either for productive use in trade or
185 business or for investment.

186 (B) Stock for stock in same corporation. No gain
187 or loss shall be recognized if common stock in a corporation is
188 exchanged solely for common stock in the same corporation, or if
189 preferred stock in a corporation is exchanged solely for preferred
190 stock in the same corporation.

191 (C) Transfers to corporation controlled by
192 transferor. No gain or loss shall be recognized if property is
193 transferred to a corporation by one or more persons solely in
194 exchange for stock or securities in such corporation, and if
195 immediately after the exchange such person or persons are in
196 control of the corporation; but in the case of an exchange by two
197 (2) or more persons, this subsection shall apply only if the
198 amount of the stock and securities received by each is
199 substantially in proportion to his interest in the property prior
200 to the exchange.

201 (D) Stock for stock on reorganization. No gain or
202 loss shall be recognized if stock or securities in a corporation,
203 a party to a reorganization, are, in pursuance of the plan of

204 reorganization, exchanged solely for stock or securities in such
205 corporation or in another corporation, a party to a
206 reorganization.

207 (2) Gain from exchanges not solely in kind. If an
208 exchange would be within the provisions of subsection (f)(1) of
209 this section, if it were not for the fact that the property
210 received in exchange consists not only of property permitted by
211 subsection (f)(1) to be received without the recognition of gain,
212 but also of other property or money, then the gain, if any, to the
213 recipient shall be recognized, but in an amount not in excess of
214 the sum of such money and the fair market value of such other
215 property so received.

216 (3) Loss from exchanges not solely in kind. If an
217 exchange would be within the provisions of subsection (f)(1) of
218 this section, if it were not for the fact that the property
219 received in exchange consists not only of property permitted by
220 subsection (f)(1) to be received without the recognition of gain
221 or loss but also of other property or money, then no loss from the
222 exchange shall be recognized.

223 (4) Distribution of stock on reorganization. If in
224 pursuance of a plan of reorganization, there is distributed to a
225 shareholder in a corporation, a party to the reorganization, stock
226 or securities in such corporation or in another corporation, a
227 party to the reorganization, without the surrender by such
228 shareholder of stock or securities in such corporation, no gain to
229 the distributee from the receipt of such stock or securities shall
230 be recognized.

231 (5) Distribution with effect of taxable dividend. If a
232 distribution made in pursuance of a plan of reorganization is
233 within the provisions of subsection (f)(4) of this section, but
234 has the effect of the distribution of a taxable dividend, then
235 there shall be taxed as a dividend to each distributee such an
236 amount of the gain recognized under subsection (f)(2) as is not in
237 excess of his rateable share of the undistributed earnings and

238 profits of the corporation. The remainder, if any, of the gain
239 recognized under subsection (f)(2) shall be taxed as a gain from
240 the exchange of property.

241 (6) Involuntary conversions. If property, as a result
242 of its destruction in whole or in part, theft, seizure or
243 requisition or condemnation, or threat or imminence thereof, is
244 compulsorily or involuntarily converted:

245 (A) Into property similar or related in service or
246 use to the property so converted, no gain shall be recognized, but
247 loss shall be recognized;

248 (B) Into money, no gain shall be recognized if
249 such money is expended, within a period ending two (2) years after
250 the close of the first taxable year in which any part of the gain
251 upon the conversion is realized, in the acquisition of other
252 property similar or related in service or use to the property so
253 converted, or in the acquisition of control of a corporation
254 owning such other property, or in the establishment of a
255 replacement fund, but loss shall be recognized. If any part of
256 the money is not so expended, the gain shall be recognized to the
257 extent of the money which is not so expended, regardless of
258 whether such money is received in one or more taxable years and
259 regardless of whether or not the money which is not so expended
260 constitutes gain. Provided, gain realized on property which is
261 compulsorily or involuntarily converted for public use under Title
262 II, Chapter 27, Mississippi Code of 1972, or any federal law
263 relating to the involuntary conversion of property for public use
264 shall not be recognized. Provided further, that gain realized on
265 property which is voluntarily converted for public use shall not
266 be recognized after it becomes evident that eminent domain
267 proceedings are probable.

268 The provisions of this subsection relating to the
269 nonrecognition of gain, including the exception provided in
270 subparagraph (B), shall apply only to an owner of the converted
271 property who has held title to such property for a period at least

272 three (3) years prior to the date of the disposition of the
273 converted property, provided that an owner who acquired such
274 property by bequest, devise, gift or inheritance shall be excluded
275 from this limitation, if the preceding owner acquired title to
276 such property at least three (3) years prior to the date of
277 disposition.

278 (7) Property exchanged treated as equivalent of cash.

279 When property other than property specified in subsection
280 (f)(1)(A) of this section is exchanged for other property, the
281 property received in exchange shall, for the purpose of
282 determining gain or loss, be treated as the equivalent of cash to
283 the amount of its fair market value.

284 (8) Distribution of assets of corporation. The
285 distribution to the taxpayer of the assets of a corporation shall
286 be treated as a sale of the stock or securities of the corporation
287 owned by him, and the gain or loss shall be computed accordingly.

288 (9) Organization of a corporation. In the case of the
289 organization of a corporation, the stock and securities received
290 shall be considered to take the place of property transferred
291 therefor, and no gain or loss shall be deemed to arise therefrom.

292 (10) Sales of certain interests in financial
293 institutions domiciled in Mississippi, domestic corporations,
294 domestic limited partnerships or domestic limited liability
295 companies.

296 (A) No gain shall be recognized from the sale of
297 authorized shares in financial institutions domiciled in
298 Mississippi and domestic corporations, or partnership interests in
299 domestic limited partnerships and domestic limited liability
300 companies, that have been held for more than one (1) year;
301 provided, however, that any gain that would otherwise be excluded
302 by this provision shall first be applied against, and reduced by,
303 any losses determined from sales or transactions described by this
304 provision if the losses were incurred in the year of the gain or
305 within the two (2) years preceding or subsequent to the gain.

306 (B) No gain shall be recognized from the sale of
307 all or at least ninety percent (90%) of the assets in domestic
308 corporations except those assets that represent the ownership
309 interest of another entity provided:

310 (i) The assets of the corporation have been
311 held for more than one (1) year;

312 (ii) The corporation is totally liquidated
313 and dissolved within one (1) calendar year from the date of the
314 sale of all or at least ninety percent (90%) of the assets of the
315 corporation; and

316 (iii) The depreciation and/or amortization
317 that has been taken on the assets of the corporation shall be
318 recaptured and taxed as ordinary income in the same manner as
319 provided for in Section 1245 of the Internal Revenue Code, as
320 amended, and any corresponding regulations relating to Section
321 1245 property. All depreciation and/or amortization shall be
322 recaptured up to cost prior to any nonrecognition of gains.

323 (g) Reorganization defined. The term "reorganization"
324 means:

325 (1) A statutory merger or consolidation;

326 (2) The acquisition by one (1) corporation, in exchange
327 solely for all or a part of its voting stock (or in exchange
328 solely for all or a part of the voting stock of a corporation
329 which is in control of the acquiring corporation), of stock of
330 another corporation if, immediately after the acquisition, the
331 acquiring corporation has control of such other corporation, or of
332 substantially all the properties of another corporation;

333 (3) A transfer by a corporation of all or a part of its
334 assets to another corporation if immediately after the transfer
335 the transferor, or one or more of its shareholders (including
336 persons who were shareholders immediately before the transfer), or
337 any combination thereof, is in control of the corporation to which
338 the assets are transferred;

339 (4) A recapitalization; or

340 (5) A mere change in identity, form, or place of
341 organization, however effected.

342 (h) Party to a reorganization defined. The term "a party to
343 a reorganization" includes a corporation resulting from a
344 reorganization and includes both corporations in the case of an
345 acquisition by one (1) corporation of at least a majority of the
346 voting stock and at least a majority of the total number of shares
347 of all other classes of stock of another corporation.

348 (i) Control defined. As used in this section, the term
349 "control" means the ownership of at least eighty percent (80%) of
350 the voting stock and at least eighty percent (80%) of the total
351 number of shares of all other classes of stock of the corporation.

352 (j) Special rules.

353 (1) Liquidation of subsidiaries. A transfer to a
354 parent corporation from its subsidiary of property distributed in
355 complete liquidation of the subsidiary shall result in no
356 recognized gain or loss if the basis of the property in the hands
357 of the parent corporation is the same as it was in the hands of
358 the subsidiary.

359 (2) Gain or loss on sales or exchanges in connection
360 with certain liquidations. Corporations adopting a plan of
361 complete liquidation under the provisions of the Internal Revenue
362 Code shall recognize the gain or loss from the sale or exchange of
363 property by the corporation under said plan. The total gain or
364 loss from the liquidating distributions shall be recognized by the
365 shareholders; however, a credit for the tax paid by the
366 liquidating corporation on the gain from the sale or exchange of
367 property under the plan of liquidation will be allowed to the
368 extent of any tax liability to the shareholders. The corporation
369 shall provide to the State Tax Commission a list of all
370 shareholders with their percentage of ownership, distribution, tax
371 credit allowed, and any other information requested.

372 (3) Distribution of stock and securities of a
373 controlled corporation. No gain shall be recognized on a

374 distribution to a stockholder of a corporation if such gain would
375 not be recognized to such stockholder for federal income tax
376 purposes under the provisions of Section 355 of the federal
377 Internal Revenue Code.

378 (4) Notwithstanding the other provisions of this
379 section, a corporation or other entity that is involved in
380 restructuring, reorganizing, distributing assets or profits, or
381 changing ownership that results in an adjustment to its asset
382 basis is required to report a gain in the year such transaction
383 occurs on any such transaction when the transaction involves
384 assets owned or used in this state, or otherwise represents assets
385 owned or used in this state. If a transfer of income or a change
386 in asset valuation occurs on the tax records of the taxpayer, such
387 transaction shall result in taxation to this state to the extent
388 of the transfer of income or change in asset valuation.

389 (5) If a corporation or other entity makes an Internal
390 Revenue Code Section 338 election, or other similar election under
391 which the aggregate basis in assets are increased on the tax
392 records of the taxpayer, then a similar election must also be made
393 for Mississippi purposes, but the gain must be recognized by the
394 corporation in which the increase in basis of the assets occurs.
395 The corporation or other entity is allowed to increase its basis
396 by the amount of gain recognized. An aggregate write-down of
397 assets is not allowed. The parent corporation shall recognize the
398 gain on the disposition of its stock.

399 (6) For state tax purposes, a corporation or other
400 legal entity is considered separate from its shareholders,
401 affiliated corporations or other entities. * * * All transactions
402 entered into by a corporation must be at "arms-length." If
403 requested by the commissioner, the taxpayer must be able to
404 substantiate that the transaction occurred at "arms-length." If
405 not, the transaction may be adjusted to the satisfaction of the
406 commissioner. For purpose of this subsection, compliance with
407 federal regulations promulgated under Internal Revenue Code

408 Section 482, shall constitute "arms-length." The provisions
409 deleted from this subsection (j)(6) by Senate Bill No. 2113, 1999
410 Regular Session, shall be deleted retroactively to January 1,
411 1990, and shall not apply to any transaction (whether occurring
412 before, on, or after January 1, 1990), except those provisions
413 shall not be retroactively deleted as to and shall apply to a
414 transaction to the extent those provisions have been applied to
415 the transaction in a taxable year of the taxpayer that is (A)
416 subject to a settlement with or decision by the commissioner that
417 is final and nonappealable as of the date of passage of Senate
418 Bill No. 2113, 1999 Regular Session, or (B) subject to a judgment
419 by a court of this state that is final and nonappealable as of the
420 date of passage of Senate Bill No. 2113, 1999 Regular Session.

421 (k) Sale or exchange of residence.

422 (1) Loss on sale or exchange of residence. Loss from
423 the sale or exchange of property used by the taxpayer as his
424 principal residence is not recognized and cannot be deducted.

425 (2) Nonrecognition of gain. Gain shall be computed in
426 accordance with the provisions of the Internal Revenue Code,
427 rules, regulations and revenue procedures relating to the sale or
428 exchange of a personal residence not in direct conflict with the
429 provisions of the Mississippi Income Tax Law.

430 (3) Gain on the sale or exchange of residence. A
431 recognizable gain on the sale or exchange of a personal residence
432 shall be included in gross income and treated as ordinary income.

433 (l) Distributions by corporations.

434 (1) Distributions of the property of a corporation,
435 including partial and complete liquidations, shall be recognized
436 by the distributing corporation and the gain or loss shall be
437 computed on the difference of the fair market value of the assets
438 distributed and their basis. The total gain or loss from the
439 distributions to the shareholders shall be recognized by the
440 shareholders subject to subsections (f)(8) and (j)(1); however, a
441 credit for the tax paid by the distributing corporation on the

442 gain from the sale or exchange of property under the plan of
443 distribution will be allowed to the extent of any liability to the
444 shareholders. The corporation shall provide to the State Tax
445 Commission a list of all shareholders with their percentage of
446 ownership, distribution, tax credit allowed, and any other
447 information requested.

448 (2) Source of distributions. For the purposes of this
449 act, every distribution is made out of earnings or profits to the
450 extent thereof, and from the most recently accumulated earnings
451 and profits. Any earnings or profit accumulated, or increase in
452 value of property acquired, before March 16, 1912, may be
453 distributed exempt from tax (after the earnings and profits
454 accumulated after March 16, 1912, have been distributed), but any
455 such tax-free distribution shall be applied against and reduce the
456 basis of the stock provided in subsection (d).

457 (3) Distributions in liquidation. Amounts distributed
458 in complete liquidation of a corporation shall be treated as in
459 full payment in exchange for the stock, and amounts distributed in
460 partial liquidation of a corporation shall be treated as in part
461 or full payment in exchange for the stock. The gain or loss to
462 the distributee resulting from such exchange shall be determined
463 under subsection (a), but shall be recognized only to the extent
464 provided in subsection (f). In the case of amounts distributed in
465 partial liquidation, the part of such distribution which is
466 property chargeable to capital account shall not be considered a
467 distribution of earnings or profits within the meaning of
468 paragraph (2) of this subsection for the purpose of determining
469 the taxability of subsequent distributions by the corporations.

470 (4) Other distributions. If any distribution (not in
471 partial or complete liquidation) made by a corporation to its
472 shareholders, is not out of increase in value of property accrued
473 before March 16, 1912, and is not out of earnings or profits, then
474 the amount of such distribution shall be applied against and
475 reduce the basis of the stock provided in subsection (d), and if

476 in excess of such basis, such excess shall be taxable in the same
477 manner as a gain from the sale or exchange of property.

478 (5) Stock dividends. A stock dividend shall not be
479 subject to tax.

480 (6) Cancellation or redemption of stock. If a
481 corporation cancels or redeems its stock (whether or not such
482 stock was issued as a stock dividend) at such time and in such
483 manner as to make the distribution and cancellation or redemption
484 in whole or in part essentially equivalent to the distribution of
485 a taxable dividend, the amount so distributed in redemption or
486 cancellation of the stock, to the extent that it represents a
487 distribution of earnings or profits accumulated after March 16,
488 1912, shall be treated as a taxable dividend.

489 (7) "Amounts distributed in partial liquidation"
490 defined. As used in this subsection, the term "amounts
491 distributed in partial liquidation" means distribution by a
492 corporation in complete cancellation or redemption of a part of
493 its stock, or one of a series of distributions in complete
494 cancellation or redemption of all or a portion of its stock.

495 (8) Distributions of stock pursuant to order enforcing
496 the Antitrust Laws. Any distribution of stock which is made
497 pursuant to the order of any court enforcing the Antitrust Laws of
498 the United States, or of any state, shall be a distribution which
499 is not out of earnings and profits of the distributing
500 corporation, but the value of the stock so distributed shall be
501 applied against and reduce the basis of the stock of the
502 distributing corporation provided in subsection (d), and if in
503 excess of such basis, such excess shall be taxable in the same
504 manner as a gain from the sale or exchange of property.

505 SECTION 2. Section 27-7-17, Mississippi Code of 1972, is
506 amended as follows:

507 27-7-17. In computing taxable income, there shall be allowed
508 as deductions:

509 (1) **Business deductions.**

510 (a) Business expenses. All the ordinary and necessary
511 expenses paid or incurred during the taxable year in carrying on
512 any trade or business, including a reasonable allowance for
513 salaries or other compensation for personal services actually
514 rendered; nonreimbursable traveling expenses incident to current
515 employment, including a reasonable amount expended for meals and
516 lodging while away from home in the pursuit of a trade or
517 business; and rentals or other payments required to be made as a
518 condition of the continued use or possession, for purposes of the
519 trade or business of property to which the taxpayer has not taken
520 or is not taking title or in which he had no equity. Expense
521 incurred in connection with earning and distributing nontaxable
522 income is not an allowable deduction. Limitations on
523 entertainment expenses shall conform to the provisions of the
524 Internal Revenue Code of 1986.

525 (b) Interest. All interest paid or accrued during the
526 taxable year on business indebtedness, except interest upon the
527 indebtedness for the purchase of tax-free bonds, or any stocks,
528 the dividends from which are nontaxable under the provisions of
529 this article; provided, however, in the case of securities
530 dealers, interest payments or accruals on loans, the proceeds of
531 which are used to purchase tax-exempt securities, shall be
532 deductible if income from otherwise tax-free securities is
533 reported as income. Investment interest expense shall be limited
534 to investment income. * * * For the purposes of this paragraph,
535 the phrase "interest upon the indebtedness for the purchase of
536 tax-free bonds" applies only to the indebtedness incurred for the
537 purpose of directly purchasing tax-free bonds and does not apply
538 to any other indebtedness incurred in the regular course of the
539 taxpayer's business. Any corporation, association, organization
540 or other entity taxable under Section 27-7-23(c) shall allocate
541 interest expense as provided in Section 27-7-23(c)(4)(H). The
542 provisions deleted from this subsection (1)(b) by Senate Bill No.
543 2113, 1999 Regular Session, shall be deleted retroactively to

544 January 1, 1990, and shall not apply to any transaction (whether
545 occurring before, on, or after January 1, 1990), except those
546 provisions shall not be retroactively deleted as to and shall
547 apply to a transaction to the extent those provisions have been
548 applied to the transaction in a taxable year of the taxpayer that
549 is (i) subject to a settlement with or decision by the
550 commissioner that is final and nonappealable as of the date of
551 passage of Senate Bill No. 2113, 1999 Regular Session, or (ii)
552 subject to a judgment by a court of this state that is final and
553 nonappealable as of the date of passage of Senate Bill No. 2113,
554 1999 Regular Session.

555 (c) Taxes. Taxes paid or accrued within the taxable
556 year, except state and federal income taxes, excise taxes based on
557 or measured by net income, estate and inheritance taxes, gift
558 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
559 use taxes unless incurred as an item of expense in a trade or
560 business or in the production of taxable income. In the case of
561 an individual, taxes permitted as an itemized deduction under the
562 provisions of subsection (2)(a) of this section are to be claimed
563 thereunder.

564 (d) Business losses.

565 (i) Losses sustained during the taxable year not
566 compensated for by insurance or otherwise, if incurred in trade or
567 business, or nonbusiness transactions entered into for profit.

568 (ii) Limitations on losses from passive activities
569 and rental real estate shall conform to the provisions of the
570 Internal Revenue Code of 1986.

571 (e) Bad debts. Losses from debts ascertained to be
572 worthless and charged off during the taxable year, if sustained in
573 the conduct of the regular trade or business of the taxpayer;
574 provided, that such losses shall be allowed only when the taxpayer
575 has reported as income, on the accrual basis, the amount of such
576 debt or account.

577 (f) Depreciation. A reasonable allowance for

578 exhaustion, wear and tear of property used in the trade or
579 business, or rental property, and depreciation upon buildings
580 based upon their reasonable value as of March 16, 1912, if
581 acquired prior thereto, and upon cost if acquired subsequent to
582 that date.

583 (g) Depletion. In the case of mines, oil and gas
584 wells, other natural deposits and timber, a reasonable allowance
585 for depletion and for depreciation of improvements, based upon
586 cost, including cost of development, not otherwise deducted, or
587 fair market value as of March 16, 1912, if acquired prior to that
588 date, such allowance to be made upon regulations prescribed by the
589 commissioner, with the approval of the Governor.

590 (h) Contributions or gifts. Except as otherwise
591 provided in subsection (2)(a) of this section for individuals,
592 contributions or gifts made by corporations within the taxable
593 year to corporations, organizations, associations or institutions,
594 including Community Chest funds, foundations and trusts created
595 solely and exclusively for religious, charitable, scientific or
596 educational purposes, or for the prevention of cruelty to children
597 or animals, no part of the net earnings of which inure to the
598 benefit of any private stockholder or individual. This deduction
599 shall be allowed in an amount not to exceed twenty percent (20%)
600 of the net income. Such contributions or gifts shall be allowable
601 as deductions only if verified under rules and regulations
602 prescribed by the commissioner, with the approval of the Governor.

603 Contributions made in any form other than cash shall be allowed
604 as a deduction, subject to the limitations herein provided, in an
605 amount equal to the actual market value of the contributions at
606 the time the contribution is actually made and consummated.

607 (i) Reserve funds - insurance companies. In the case
608 of insurance companies the net additions required by law to be
609 made within the taxable year to reserve funds when such reserve
610 funds are maintained for the purpose of liquidating policies at
611 maturity.

612 (j) Annuity income. The sums, other than dividends,
613 paid within the taxpayer year on policy or annuity contracts when
614 such income has been included in gross income.

615 (k) Contributions to employee pension plans.
616 Contributions made by an employer to a plan or a trust forming
617 part of a pension plan, stock bonus plan, disability or
618 death-benefit plan, or profit-sharing plan of such employer for
619 the exclusive benefit of some or all of his, their, or its
620 employees, or their beneficiaries, shall be deductible from his,
621 their, or its income only to the extent that, and for the taxable
622 year in which, the contribution is deductible for federal income
623 tax purposes under the Internal Revenue Code of 1986 and any other
624 provisions of similar purport in the Internal Revenue Laws of the
625 United States, and the rules, regulations, rulings and
626 determinations promulgated thereunder, provided that:

627 (i) The plan or trust be irrevocable.

628 (ii) The plan or trust constitute a part of a
629 pension plan, stock bonus plan, disability or death-benefit plan,
630 or profit-sharing plan for the exclusive benefit of some or all of
631 the employer's employees and/or officers, or their beneficiaries,
632 for the purpose of distributing the corpus and income of the plan
633 or trust to such employees and/or officers, or their
634 beneficiaries.

635 (iii) No part of the corpus or income of the plan
636 or trust can be used for purposes other than for the exclusive
637 benefit of employees and/or officers, or their beneficiaries.

638 Contributions to all plans or to all trusts of real or
639 personal property (or real and personal property combined) or to
640 insured plans created under a retirement plan for which provision
641 has been made under the laws of the United States of America,
642 making such contributions deductible from income for federal
643 income tax purposes, shall be deductible only to the same extent
644 under the Income Tax Laws of the State of Mississippi.

645 (l) Net operating loss carrybacks and carryovers.

646 A net operating loss for any taxable year ending after December
647 31, 1993, and taxable years thereafter, shall be a net operating
648 loss carryback to each of the three (3) taxable years preceding
649 the taxable year of the loss. If the net operating loss for any
650 taxable year is not exhausted by carrybacks to the three (3)
651 taxable years preceding the taxable year of the loss, then there
652 shall be a net operating loss carryover to each of the fifteen
653 (15) taxable years following the taxable year of the loss
654 beginning with any taxable year after December 31, 1991.

655 For any taxable year ending after December 31, 1997, the
656 period for net operating loss carrybacks and net operating loss
657 carryovers shall be the same as those established by the Internal
658 Revenue Code and the rules, regulations, rulings and
659 determinations promulgated thereunder.

660 The term "net operating loss," for the purposes of this
661 paragraph, shall be the excess of the deductions allowed over the
662 gross income; provided, however, the following deductions shall
663 not be allowed in computing same:

664 (i) No net operating loss deduction shall be
665 allowed.

666 (ii) No personal exemption deduction shall be
667 allowed.

668 (iii) Allowable deductions which are not
669 attributable to taxpayer's trade or business shall be allowed only
670 to the extent of the amount of gross income not derived from such
671 trade or business.

672 Any taxpayer entitled to a carryback period as provided by
673 this paragraph may elect to relinquish the entire carryback period
674 with respect to a net operating loss for any taxable year ending
675 after December 31, 1991. The election shall be made in the manner
676 prescribed by the State Tax Commission and shall be made by the
677 due date, including extensions of time, for filing the taxpayer's
678 return for the taxable year of the net operating loss for which
679 the election is to be in effect. The election, once made for any

680 taxable year, shall be irrevocable for that taxable year.

681 (m) Amortization of pollution or environmental control
682 facilities.

683 Allowance of deduction. Every taxpayer, at his election,
684 shall be entitled to a deduction for pollution or environmental
685 control facilities to the same extent as that allowed under the
686 Internal Revenue Code and the rules, regulations, rulings and
687 determinations promulgated thereunder.

688 (n) Dividend distributions - investment trusts.

689 Dividends distributed by an investment trust defined in Section
690 79-15-3, if the dividend distributions meet the requirements of
691 Section 857 or are otherwise deductible under Section 858 or 860,
692 federal Internal Revenue Code of 1986, as amended. The deductions
693 allowed in this paragraph shall be effective for the 1985 taxable
694 year of the investment trust and for each taxable year thereafter.

695 (2) **Individual nonbusiness deductions.**

696 (a) The amount allowable for individual nonbusiness
697 itemized deductions for federal income tax purposes, except the
698 deduction for state income taxes paid, where the individual is
699 eligible to elect, for the taxable year, to itemize deductions on
700 his federal return; or

701 (b) In lieu of the individual nonbusiness itemized
702 deductions authorized in paragraph (a), for all purposes other
703 than ordinary and necessary expenses paid or incurred during the
704 taxable year in carrying on any trade or business, an optional
705 standard deduction of:

706 (i) Three Thousand Four Hundred Dollars
707 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
708 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
709 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
710 in the case of married individuals filing a joint or combined
711 return;

712 (ii) One Thousand Seven Hundred Dollars
713 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred

714 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
715 Three Hundred Dollars (\$2,300.00) for each calendar year
716 thereafter in the case of married individuals filing separate
717 returns;

718 (iii) Three Thousand Four Hundred Dollars
719 (\$3,400.00) in the case of a head of family; or

720 (iv) Two Thousand Three Hundred Dollars
721 (\$2,300.00) in the case of an individual who is not married.

722 In the case of a husband and wife living together, having
723 separate incomes, and filing combined returns, the standard
724 deduction authorized may be divided in any manner they choose. In
725 the case of separate returns by a husband and wife, the standard
726 deduction shall not be allowed to either if the taxable income of
727 one of the spouses is determined without regard to the standard
728 deduction.

729 (c) A nonresident individual shall be allowed the same
730 individual nonbusiness deductions as are authorized for resident
731 individuals in paragraph (a) or (b) of this subsection; however,
732 the nonresident individual is entitled only to that proportion of
733 the individual nonbusiness deductions as his net income from
734 sources within the State of Mississippi bears to his total or
735 entire net income from all sources.

736 (3) Nothing in this section shall permit the same item to be
737 deducted more than once, either in fact or in effect.

738 SECTION 3. (1) The same or similar principles to the
739 provisions deleted from Section 27-7-9(j)(6) by Senate Bill No.
740 2113, 1999 Regular Session, shall not be utilized to any
741 transaction (whether occurring before, on, or after January 1,
742 1990) in making any adjustments or eliminations to arrive at
743 taxable income to this state (such prohibited adjustments or
744 eliminations including, but not being limited to, disallowing any
745 interest expense deduction or reattributing any indebtedness
746 between or among persons), except those same or similar principles
747 may be so utilized to a transaction to the extent such principles

748 have been so utilized to the transaction in a taxable year of the
749 taxpayer that is (a) subject to a settlement with or a decision by
750 the commissioner that is final and nonappealable as of the date of
751 passage of Senate Bill No. 2113, 1999 Regular Session, or (b)
752 subject to a judgment by a court of this state that is final and
753 nonappealable as of the date of passage of Senate Bill No. 2113,
754 1999 Regular Session.

755 (2) The same or similar principles to the provisions deleted
756 from Section 27-7-17(1)(b) by Senate Bill No. 2113, 1999 Regular
757 Session, shall not be utilized to any transaction (whether
758 occurring before, on, or after January 1, 1990) in disallowing any
759 interest expense deduction or in reattributing any indebtedness
760 between or among persons, except those same or similar principles
761 may be so utilized to a transaction to the extent such principles
762 have been so utilized to the transaction in a taxable year of the
763 taxpayer that is (a) subject to a settlement with or a decision by
764 the commissioner that is final and nonappealable as of the date of
765 passage of Senate Bill No. 2113, 1999 Regular Session, or (b)
766 subject to a judgment by a court of this state that is final and
767 nonappealable as of the date of passage of Senate Bill No. 2113,
768 1999 Regular Session.

769 SECTION 4. Nothing in this act shall affect any applicable
770 statute of limitations on the time for the assessment or refund of
771 any income tax to this state or for the determination of any
772 taxable income to this state.

773 SECTION 5. Section 3 of this act shall be codified as a
774 separate code section in Chapter 7, Title 27, Mississippi Code of
775 1972.

776 SECTION 6. If any section, paragraph, sentence, clause,
777 phrase or any part of this act is declared to be unconstitutional
778 or void, or if for any reason is declared to be invalid or of no
779 effect, the remaining sections, paragraphs, sentences, clauses,
780 phrases or parts thereof shall be in no manner affected thereby
781 but shall remain in full force and effect.

782 SECTION 7. This act shall take effect and be in force from
783 and after its passage.