

By: Representative Guice

To: Ways and Means

HOUSE BILL NO. 272

1 AN ACT TO AMEND SECTION 27-7-9, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT FOR STATE INCOME TAX PURPOSES NO GAIN SHALL BE
3 RECOGNIZED ON THE SALE OR EXCHANGE OF A PERSONAL RESIDENCE IF THE
4 SALE OR EXCHANGE OCCURS ON OR AFTER JANUARY 1, 2002; AND FOR
5 RELATED PURPOSES.

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

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

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

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

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

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

26 (b) Recognition of gain or loss. Except as otherwise
27 provided in this section, on the sale or exchange of property the



28 entire amount of the gain or loss, determined under subsection
29 (a), shall be recognized.

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

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

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

42 (d) Basis of property.

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

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

52 (3) Property acquired by gift. In the case of property
53 acquired by gift after January 1, 1936, the basis shall be the
54 same as that which it would have in the hands of the donor or the
55 last preceding owner by whom it was not acquired by gift. If the
56 facts necessary to determine such basis are unknown to the donee,
57 the commissioner shall, if possible, obtain such facts from such
58 donor, or last preceding owner, or any other person cognizant
59 thereof. If the commissioner finds it impossible to obtain such
60 facts, the commissioner shall establish a basis for the property



61 from the best information available. In the case of property
62 acquired by gift on or before January 1, 1936, the basis for
63 ascertaining gain or loss from the sale or other disposition
64 thereof shall be the fair market price or value of such property
65 at the time of acquisition.

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

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

91 (6) Property acquired in tax-free exchanges. If the
92 property was acquired upon an exchange described in subsection
93 (f), the basis shall be the same as in the case of the property



94 exchanged, decreased in the amount of any money received by the
95 taxpayer and increased in the amount of gain or decreased in the
96 amount of loss to the taxpayer that was recognized upon such
97 exchange by the terms of this act. If the property so acquired
98 consisted in part of the type of property permitted by subsection
99 (f) to be received without recognition of gain or loss, and in
100 part of other property, the basis provided in this subsection
101 shall be allocated between the properties (other than money)
102 received, and for the purpose of the allocation there shall be
103 assigned to such other property an amount equivalent to its fair
104 market value at the date of the exchange.

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

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

122 (9) Property acquired in wash sales. If substantially
123 identical property was acquired in place of stock or securities
124 which were sold or disposed of and in respect of which loss was
125 not allowed as a deduction under Section 27-7-17(d), the basis in
126 the case of property so acquired shall be the basis in the case of



127 the stock or securities so sold or disposed of, except that, if
128 the repurchase price was in excess of the sales price, such basis
129 shall be increased in the amount of the difference, or if the
130 repurchase price was less than the sales price, such basis shall
131 be decreased in the amount of the difference.

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

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

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

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

146 (e) Adjustments to basis.

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



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

175 (1) Exchange solely in kind.

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

190 (C) Transfers to corporation controlled by
191 transferor. No gain or loss shall be recognized if property is
192 transferred to a corporation by one or more persons solely in

193 exchange for stock or securities in such corporation, and if
194 immediately after the exchange such person or persons are in
195 control of the corporation; but in the case of an exchange by two
196 (2) or more persons, this subsection shall apply only if the
197 amount of the stock and securities received by each is
198 substantially in proportion to his interest in the property prior
199 to the exchange.

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

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

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

222 (4) Distribution of stock on reorganization. If in
223 pursuance of a plan of reorganization, there is distributed to a
224 shareholder in a corporation, a party to the reorganization, stock
225 or securities in such corporation or in another corporation, a



226 party to the reorganization, without the surrender by such
227 shareholder of stock or securities in such corporation, no gain to
228 the distributee from the receipt of such stock or securities shall
229 be recognized.

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

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

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

247 (B) Into money, no gain shall be recognized if
248 such money is expended, within a period ending two (2) years after
249 the close of the first taxable year in which any part of the gain
250 upon the conversion is realized, in the acquisition of other
251 property similar or related in service or use to the property so
252 converted, or in the acquisition of control of a corporation
253 owning such other property, or in the establishment of a
254 replacement fund, but loss shall be recognized. If any part of
255 the money is not so expended, the gain shall be recognized to the
256 extent of the money which is not so expended, regardless of
257 whether such money is received in one or more taxable years and
258 regardless of whether or not the money which is not so expended



259 constitutes gain. Provided, gain realized on property which is
260 compulsorily or involuntarily converted for public use under Title
261 II, Chapter 27, Mississippi Code of 1972, or any federal law
262 relating to the involuntary conversion of property for public use
263 shall not be recognized. Provided further, that gain realized on
264 property which is voluntarily converted for public use shall not
265 be recognized after it becomes evident that eminent domain
266 proceedings are probable.

267 The provisions of this subsection relating to the
268 nonrecognition of gain, including the exception provided in
269 subparagraph (B), shall apply only to an owner of the converted
270 property who has held title to such property for a period at least
271 three (3) years prior to the date of the disposition of the
272 converted property, provided that an owner who acquired such
273 property by bequest, devise, gift or inheritance shall be excluded
274 from this limitation, if the preceding owner acquired title to
275 such property at least three (3) years prior to the date of
276 disposition.

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

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

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



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

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

324 (1) A statutory merger or consolidation;

325 (2) The acquisition by one (1) corporation, in exchange

326 solely for all or a part of its voting stock (or in exchange

327 solely for all or a part of the voting stock of a corporation

328 which is in control of the acquiring corporation), of stock of

329 another corporation if, immediately after the acquisition, the

330 acquiring corporation has control of such other corporation, or of

331 substantially all the properties of another corporation;

332 (3) A transfer by a corporation of all or a part of its

333 assets to another corporation if immediately after the transfer

334 the transferor, or one or more of its shareholders (including

335 persons who were shareholders immediately before the transfer), or

336 any combination thereof, is in control of the corporation to which

337 the assets are transferred;

338 (4) A recapitalization; or

339 (5) A mere change in identity, form, or place of

340 organization, however effected.

341 (h) Party to a reorganization defined. The term "a party to

342 a reorganization" includes a corporation resulting from a

343 reorganization and includes both corporations in the case of an

344 acquisition by one (1) corporation of at least a majority of the

345 voting stock and at least a majority of the total number of shares

346 of all other classes of stock of another corporation.

347 (i) Control defined. As used in this section, the term

348 "control" means the ownership of at least eighty percent (80%) of

349 the voting stock and at least eighty percent (80%) of the total

350 number of shares of all other classes of stock of the corporation.

351 (j) Special rules.

352 (1) Liquidation of subsidiaries. A transfer to a

353 parent corporation from its subsidiary of property distributed in

354 complete liquidation of the subsidiary shall result in no

355 recognized gain or loss if the basis of the property in the hands



356 of the parent corporation is the same as it was in the hands of
357 the subsidiary.

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

371 (3) Distribution of stock and securities of a
372 controlled corporation. No gain shall be recognized on a
373 distribution to a stockholder of a corporation if such gain would
374 not be recognized to such stockholder for federal income tax
375 purposes under the provisions of Section 355 of the federal
376 Internal Revenue Code.

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



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

398 (6) For state tax purposes, a corporation or other
399 legal entity is considered separate from its shareholders,
400 affiliated corporations or other entities. If a corporation or
401 other legal entity enters into any transaction that is for the
402 benefit of its shareholders or for the benefit of an affiliated
403 corporation without an equal mutual business benefit of the
404 corporation, then, the transaction will be adjusted or eliminated
405 to arrive at taxable income to this state. All transactions
406 entered into by a corporation must be at "arms-length." If
407 requested by the commissioner, the taxpayer must be able to
408 substantiate that the transaction occurred at "arms-length." If
409 not, the transaction may be adjusted to the satisfaction of the
410 commissioner. For purpose of this subsection, compliance with
411 federal regulations promulgated under Internal Revenue Code
412 Section 482, shall constitute "arms-length."

413 (k) Sale or exchange of residence.

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

417 (2) Nonrecognition of gain. Gain shall be computed in
418 accordance with the provisions of the Internal Revenue Code,
419 rules, regulations and revenue procedures relating to the sale or
420 exchange of a personal residence not in direct conflict with the



421 provisions of the Mississippi Income Tax Law. However, no gain
422 shall be recognized on the sale or exchange of a personal
423 residence if the sale or exchange occurs on or after January 1,
424 2002.

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

428 (1) Distributions by corporations.

429 (1) Distributions of the property of a corporation,
430 including partial and complete liquidations, shall be recognized
431 by the distributing corporation and the gain or loss shall be
432 computed on the difference of the fair market value of the assets
433 distributed and their basis. The total gain or loss from the
434 distributions to the shareholders shall be recognized by the
435 shareholders subject to subsections (f)(8) and (j)(1); however, a
436 credit for the tax paid by the distributing corporation on the
437 gain from the sale or exchange of property under the plan of
438 distribution will be allowed to the extent of any liability to the
439 shareholders. The corporation shall provide to the State Tax
440 Commission a list of all shareholders with their percentage of
441 ownership, distribution, tax credit allowed, and any other
442 information requested.

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

452 (3) Distributions in liquidation. Amounts distributed
453 in complete liquidation of a corporation shall be treated as in



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

465 (4) Other distributions. If any distribution (not in
466 partial or complete liquidation) made by a corporation to its
467 shareholders, is not out of increase in value of property accrued
468 before March 16, 1912, and is not out of earnings or profits, then
469 the amount of such distribution shall be applied against and
470 reduce the basis of the stock provided in subsection (d), and if
471 in excess of such basis, such excess shall be taxable in the same
472 manner as a gain from the sale or exchange of property.

473 (5) Stock dividends. A stock dividend shall not be
474 subject to tax.

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

484 (7) "Amounts distributed in partial liquidation"
485 defined. As used in this subsection, the term "amounts
486 distributed in partial liquidation" means distribution by a



487 corporation in complete cancellation or redemption of a part of
488 its stock, or one of a series of distributions in complete
489 cancellation or redemption of all or a portion of its stock.

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

500 SECTION 2. Nothing in this act shall affect or defeat any
501 claim, assessment, appeal, suit, right or cause of action for
502 taxes due or accrued under the income tax laws before the date on
503 which this act becomes effective, whether such claims,
504 assessments, appeals, suits or actions have been begun before the
505 date on which this act becomes effective or are begun thereafter;
506 and the provisions of the income tax laws are expressly continued
507 in full force, effect and operation for the purpose of the
508 assessment, collection and enrollment of liens for any taxes due
509 or accrued and the execution of any warrant under such laws before
510 the date on which this act becomes effective, and for the
511 imposition of any penalties, forfeitures or claims for failure to
512 comply with such laws.

513 SECTION 3. This act shall take effect and be in force from
514 and after July 1, 2001.

