HOUSE BILL NO. 272

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

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

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

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

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

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

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

(b) Recognition of gain or loss. Except as otherwise provided in this section, on the sale or exchange of property the
entire amount of the gain or loss, determined under subsection (a), shall be recognized.

(c) Adjusted basis for determining gain or loss.

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

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

(d) Basis of property.

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

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

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

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

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

(6) Property acquired in tax-free exchanges. If the
property was acquired upon an exchange described in subsection
(f), the basis shall be the same as in the case of the property
exchanged, decreased in the amount of any money received by the
taxpayer and increased in the amount of gain or decreased in the
amount of loss to the taxpayer that was recognized upon such
exchange by the terms of this act. If the property so acquired
consisted in part of the type of property permitted by subsection
(f) to be received without recognition of gain or loss, and in
part of other property, the basis provided in this subsection
shall be allocated between the properties (other than money)
received, and for the purpose of the allocation there shall be
assigned to such other property an amount equivalent to its fair
market value at the date of the exchange.

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

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

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

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

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

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

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

(e) Adjustments to basis.

(1) In general. In computing the amount of gain or
loss from the sale or other disposition of property, proper
adjustment shall be made for any expenditure, receipt, loss or
other item, properly chargeable to capital account since the basis
date. The cost or other basis of the property shall also be
diminished by the amount of the deductions for exhaustion, wear
and tear, obsolescence, amortization, and depletion, which have
since the acquisition of the property been allowable in respect of
such property whether or not such deductions were claimed by the
taxpayer or formerly allowed. In the case of stock, the basis
shall be diminished by the amount of distributions previously made
in respect to such stock, to the extent provided under this
section.
(2) Substituted basis. Whenever it appears that the basis of the property in the hands of a taxpayer is a substituted basis, then the adjustments provided in subsection (e)(1) shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor or grantor, or during which the other property was held by the person for whom the basis is to be determined. The term "substituted basis" as used in this subsection means a basis determined under any provision of this section or under any corresponding provision of a prior Income Tax Law, providing that the basis shall be determined by reference to the basis in the hands of a transferor, donor or grantor, or, by reference to other property held at any time by the person for whom the basis is to be determined.

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

(1) Exchange solely in kind.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Organization of a corporation. In the case of the organization of a corporation, the stock and securities received shall be considered to take the place of property transferred therefor, and no gain or loss shall be deemed to arise therefrom.
(10) Sales of certain interests in financial institutions domiciled in Mississippi, domestic corporations, domestic limited partnerships or domestic limited liability companies.

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

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

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

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

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

(g) Reorganization defined. The term "reorganization" means:
(1) A statutory merger or consolidation;

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

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

(4) A recapitalization; or

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

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

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

(j) Special rules.

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

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

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

(4) Notwithstanding the other provisions of this
section, a corporation or other entity that is involved in
restructuring, reorganizing, distributing assets or profits, or
changing ownership that results in an adjustment to its asset
basis is required to report a gain in the year such transaction
occurs on any such transaction when the transaction involves
assets owned or used in this state, or otherwise represents assets
owned or used in this state. If a transfer of income or a change
in asset valuation occurs on the tax records of the taxpayer, such
transaction shall result in taxation to this state to the extent
of the transfer of income or change in asset valuation.
(5) If a corporation or other entity makes an Internal Revenue Code Section 338 election, or other similar election under which the aggregate basis in assets are increased on the tax records of the taxpayer, then a similar election must also be made for Mississippi purposes, but the gain must be recognized by the corporation in which the increase in basis of the assets occurs. The corporation or other entity is allowed to increase its basis by the amount of gain recognized. An aggregate write-down of assets is not allowed. The parent corporation shall recognize the gain on the disposition of its stock.

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

(k) Sale or exchange of residence.

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

(2) Nonrecognition of gain. Gain shall be computed in accordance with the provisions of the Internal Revenue Code, rules, regulations and revenue procedures relating to the sale or exchange of a personal residence not in direct conflict with the
provisions of the Mississippi Income Tax Law. However, no gain
shall be recognized on the sale or exchange of a personal
residence if the sale or exchange occurs on or after January 1,
2002.

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

(1) Distributions by corporations.

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

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

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

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

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

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

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

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

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

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