

By: Representatives Reeves, McCoy, Morris,
Smith (39th)

To: Ways and Means

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1695

1 AN ACT TO AMEND SECTION 27-7-9, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE MANNER IN WHICH A TRANSACTION BY A CORPORATION OR OTHER
3 LEGAL ENTITY IS DETERMINED TO BE "ARMS-LENGTH" FOR INCOME TAX
4 PURPOSES WHEN THE CHAIRMAN OF THE STATE TAX COMMISSION DETERMINES
5 THAT THERE IS A SHIFTING OF INCOME WHICH RESULTS IN A DECREASE IN
6 INCOME OR AN INCREASE IN A LOSS BEING ALLOCATED OR APPORTIONED TO
7 THIS STATE; TO AMEND SECTION 27-7-15, MISSISSIPPI CODE OF 1972, TO
8 PROVIDE FOR THE RECOGNITION OF GAIN OR PROFIT FROM THE CASUAL SALE
9 OF PROPERTY BY INSTALLMENT SALE IN THE YEAR OF THE SALE; TO ALLOW
10 DEFERRAL OF THE TAX RESULTING FROM THE GAIN IF THE GAIN IS
11 DEFERRED FOR FEDERAL INCOME TAX PURPOSES TO THE EXTENT PROVIDED
12 UNDER REGULATIONS PRESCRIBED BY THE CHAIRMAN OF THE STATE TAX
13 COMMISSION; TO EXCLUDE FROM THE DEFINITION OF THE TERM "GROSS
14 INCOME" CERTAIN INCOME RESULTING FROM TRANSACTIONS WITH A RELATED
15 MEMBER; TO AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, TO
16 PROVIDE THAT, IN COMPUTING NET INCOME, A TAXPAYER MUST ADD BACK
17 CERTAIN OTHERWISE DEDUCTIBLE EXPENSES AND COSTS PAID TO RELATED
18 MEMBERS; TO AMEND SECTION 27-7-23, MISSISSIPPI CODE OF 1972, TO
19 REVISE THE DEFINITION OF THE TERM "BUSINESS INCOME"; TO REVISE THE
20 MANNER IN WHICH THE INCOME OF MULTISTATE ENTITIES IS ALLOCATED AND
21 APPORTIONED; TO PROVIDE FOR THE ALLOCATION OF CERTAIN NONBUSINESS
22 INCOME; TO AMEND SECTIONS 27-7-24.3 AND 27-8-3, MISSISSIPPI CODE
23 OF 1972, IN CONFORMITY THERETO; TO AMEND SECTION 27-13-13,
24 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE MANNER IN WHICH THE
25 ASSETS OF CERTAIN FLOW-THROUGH ENTITIES SHALL BE INCLUDED IN THE
26 RATIO USED TO DETERMINE THE VALUE OF THE CAPITAL EMPLOYED IN THIS
27 STATE FOR FRANCHISE TAX PURPOSES; AND FOR RELATED PURPOSES.

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

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

31 27-7-9. (a) Except as provided in Sections 27-7-95 through
32 27-7-103, determination of amount of gain or loss.

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



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

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

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

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

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

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

64 (d) Basis of property.

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



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

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

88 (4) Property acquired by bequests, devises and
89 inheritance. If personal property was acquired by specific
90 bequest, or if real property was acquired by general or specific
91 devise or by intestacy, the basis shall be the fair market value
92 of the property at the time of the death of the decedent. If the
93 property was acquired by the decedent's estate from the decedent,
94 the basis in the hands of the estate shall be the fair market
95 value of the property at the time of the death of the decedent.
96 In all other cases, if the property was acquired either by will or
97 by intestacy, the basis shall be the fair market value of the
98 property at the time of the distribution to the taxpayer. In the
99 case of property transferred in trust to pay the income for life
100 to or upon the order or direction of the grantor, with the right
101 reserved to the grantor at all times prior to his death to revoke
102 the trust, the basis of such property in the hands of the persons
103 entitled under the terms of the trust instrument to the property



104 after the grantor's death shall, after such death, be the same as
105 if the trust instrument had been a will executed on the day of the
106 grantor's death.

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

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

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

134 (8) Property acquired in involuntary conversions. If
135 the property was acquired as the result of a compulsory or
136 involuntary conversion described in subsection (f), the basis



137 shall be the same as in the case of property so converted,
138 decreased in the amount of any money received by the taxpayer
139 which was not expended in accordance with the provisions of said
140 subsection determining the taxable status of the gain or loss upon
141 such conversion, and increased in the amount of gain or decreased
142 in the amount of loss to the taxpayer recognized upon such
143 conversion.

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

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

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

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

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

168 (e) Adjustments to basis.



169 (1) In general. In computing the amount of gain or
170 loss from the sale or other disposition of property, proper
171 adjustment shall be made for any expenditure, receipt, loss or
172 other item, properly chargeable to capital account since the basis
173 date. The cost or other basis of the property shall also be
174 diminished by the amount of the deductions for exhaustion, wear
175 and tear, obsolescence, amortization, and depletion, which have
176 since the acquisition of the property been allowable in respect of
177 such property whether or not such deductions were claimed by the
178 taxpayer or formerly allowed. In the case of stock, the basis
179 shall be diminished by the amount of distributions previously made
180 in respect to such stock, to the extent provided under this
181 section.

182 (2) Substituted basis. Whenever it appears that the
183 basis of the property in the hands of a taxpayer is a substituted
184 basis, then the adjustments provided in subsection (e)(1) shall be
185 made after first making in respect of such substituted basis
186 proper adjustments of a similar nature in respect of the period
187 during which the property was held by the transferor, donor or
188 grantor, or during which the other property was held by the person
189 for whom the basis is to be determined. The term "substituted
190 basis" as used in this subsection means a basis determined under
191 any provision of this section or under any corresponding provision
192 of a prior Income Tax Law, providing that the basis shall be
193 determined by reference to the basis in the hands of a transferor,
194 donor or grantor, or, by reference to other property held at any
195 time by the person for whom the basis is to be determined.

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

197 (1) Exchange solely in kind.

198 (A) Property held for productive use or
199 investment. No gain or loss shall be recognized if property held
200 for productive use in trade or business or for investment (not
201 including stock in trade or other property held primarily for



202 sale, nor stocks, bonds, notes, choses in action, certificates of
203 trust or beneficial interest, or other securities or evidence of
204 indebtedness or interest) is exchanged solely for property of a
205 like kind to be held either for productive use in trade or
206 business or for investment.

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

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

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

228 (2) Gain from exchanges not solely in kind. If an
229 exchange would be within the provisions of subsection (f)(1) of
230 this section, if it were not for the fact that the property
231 received in exchange consists not only of property permitted by
232 subsection (f)(1) to be received without the recognition of gain,
233 but also of other property or money, then the gain, if any, to the
234 recipient shall be recognized, but in an amount not in excess of



235 the sum of such money and the fair market value of such other
236 property so received.

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

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

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

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



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

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

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



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

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

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

313 (10) Sales of certain interests in financial
314 institutions domiciled in Mississippi, domestic corporations,
315 domestic limited partnerships or domestic limited liability
316 companies.

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

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



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

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

337 (iii) The depreciation and/or amortization
338 that has been taken on the assets of the corporation shall be
339 recaptured and taxed as ordinary income in the same manner as
340 provided for in Section 1245 of the Internal Revenue Code, as
341 amended, and any corresponding regulations relating to Section
342 1245 property. All depreciation and/or amortization shall be
343 recaptured up to cost prior to any nonrecognition of gains.

344 (g) Reorganization defined. The term "reorganization"
345 means:

346 (1) A statutory merger or consolidation;

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

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

360 (4) A recapitalization; or

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



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

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

373 (j) Special rules.

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

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

393 (3) Distribution of stock and securities of a
394 controlled corporation. No gain shall be recognized on a
395 distribution to a stockholder of a corporation if such gain would



396 not be recognized to such stockholder for federal income tax
397 purposes under the provisions of Section 355 of the federal
398 Internal Revenue Code.

399 (4) Notwithstanding the other provisions of this
400 section, a corporation or other entity that is involved in
401 restructuring, reorganizing, distributing assets or profits, or
402 changing ownership that results in an adjustment to its asset
403 basis is required to report a gain in the year such transaction
404 occurs on any such transaction when the transaction involves
405 assets owned or used in this state, or otherwise represents assets
406 owned or used in this state. If a transfer of income or a change
407 in asset valuation occurs on the tax records of the taxpayer, such
408 transaction shall result in taxation to this state to the extent
409 of the transfer of income or change in asset valuation.

410 (5) If a corporation or other entity makes an Internal
411 Revenue Code Section 338 election, or other similar election under
412 which the aggregate basis in assets are increased on the tax
413 records of the taxpayer, then a similar election must also be made
414 for Mississippi purposes, but the gain must be recognized by the
415 corporation in which the increase in basis of the assets occurs.
416 The corporation or other entity is allowed to increase its basis
417 by the amount of gain recognized. An aggregate write-down of
418 assets is not allowed. The parent corporation shall recognize the
419 gain on the disposition of its stock.

420 (6) For state tax purposes, a corporation or other
421 legal entity is considered separate from its shareholders,
422 affiliated corporations or other entities. If a corporation or
423 other legal entity enters into any transaction that is for the
424 benefit of its shareholders or for the benefit of an affiliated
425 corporation without an equal mutual business benefit of the
426 corporation, then, the transaction will be adjusted or eliminated
427 to arrive at taxable income to this state. All transactions
428 entered into by a corporation must be at "arms-length." If



429 requested by the commissioner, the taxpayer must be able to
430 substantiate that the transaction occurred at "arms-length." If
431 not, the transaction may be adjusted to the satisfaction of the
432 commissioner. For purpose of this subsection, compliance with
433 federal regulations promulgated under Internal Revenue Code
434 Section 482, shall constitute "arms-length" unless the
435 commissioner determines that there is a shifting of income between
436 states, foreign countries or entities, the purpose of which is to
437 avoid taxes causing a decrease in income or an increase in a loss
438 being allocated or apportioned to this state. However, if the
439 commissioner makes such a determination, a taxpayer may rebut the
440 commissioner's determination by showing that the shifting of
441 income is for a valid business purpose and that income shifted to
442 another state is subject to taxation at a tax rate equal to or
443 higher than the rate applicable in Mississippi. The commissioner
444 may adjust transactions that constitute the shifting of income for
445 the purpose of avoidance of tax in this state.

446 (k) Sale or exchange of residence.

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

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

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

458 (1) Distributions by corporations.

459 (1) Distributions of the property of a corporation,
460 including partial and complete liquidations, shall be recognized
461 by the distributing corporation and the gain or loss shall be



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

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

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



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

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

505 (6) Cancellation or redemption of stock. If a
506 corporation cancels or redeems its stock (whether or not such
507 stock was issued as a stock dividend) at such time and in such
508 manner as to make the distribution and cancellation or redemption
509 in whole or in part essentially equivalent to the distribution of
510 a taxable dividend, the amount so distributed in redemption or
511 cancellation of the stock, to the extent that it represents a
512 distribution of earnings or profits accumulated after March 16,
513 1912, shall be treated as a taxable dividend.

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

520 (8) Distributions of stock pursuant to order enforcing
521 the Antitrust Laws. Any distribution of stock which is made
522 pursuant to the order of any court enforcing the Antitrust Laws of
523 the United States, or of any state, shall be a distribution which
524 is not out of earnings and profits of the distributing
525 corporation, but the value of the stock so distributed shall be
526 applied against and reduce the basis of the stock of the
527 distributing corporation provided in subsection (d), and if in



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

530 SECTION 2. Section 27-7-15, Mississippi Code of 1972, is
531 amended as follows:

532 27-7-15. (1) For the purposes of this article, except as
533 otherwise provided, the term "gross income" means and includes the
534 income of a taxpayer derived from salaries, wages, fees or
535 compensation for service, of whatever kind and in whatever form
536 paid, including income from governmental agencies and subdivisions
537 thereof; or from professions, vocations, trades, businesses,
538 commerce or sales, or renting or dealing in property, or
539 reacquired property; also from annuities, interest, rents,
540 dividends, securities, insurance premiums, reinsurance premiums,
541 considerations for supplemental insurance contracts, or the
542 transaction of any business carried on for gain or profit, or
543 gains, or profits, and income derived from any source whatever and
544 in whatever form paid. The amount of all such items of income
545 shall be included in the gross income for the taxable year in
546 which received by the taxpayer. The amount by which an eligible
547 employee's salary is reduced pursuant to a salary reduction
548 agreement authorized under Section 25-17-5 shall be excluded from
549 the term "gross income" within the meaning of this article.

550 (2) In determining gross income for the purpose of this
551 section, the following, under regulations prescribed by the
552 commissioner, shall be applicable:

553 (a) Dealers in property. Federal rules, regulations
554 and revenue procedures shall be followed with respect to
555 installment sales unless a transaction results in the shifting of
556 income from inside the state to outside the state.

557 (b) Casual sales of property. * * *

558 (i) Prior to January 1, 2001, federal rules,
559 regulations and revenue procedures shall be followed with respect
560 to installment sales except they shall be applied and administered



561 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the
562 106th Congress had not been enacted. This provision will
563 generally affect taxpayers, reporting on the accrual method of
564 accounting, entering into installment note agreements on or after
565 December 17, 1999. Any gain or profit resulting from the casual
566 sale of property will be recognized in the year of sale.

567 (ii) From and after January 1, 2001, federal
568 rules, regulations and revenue procedures shall be followed with
569 respect to installment sales except as provided in this
570 subparagraph (ii). Gain or profit from the casual sale of
571 property shall be recognized in the year of sale. When a taxpayer
572 recognizes gain on the casual sale of property in which the gain
573 is deferred for federal income tax purposes, a taxpayer may elect
574 to defer the payment of tax resulting from the gain as allowed and
575 to the extent provided under regulations prescribed by the
576 commissioner. If the payment of the tax is made on a deferred
577 basis, the tax shall be computed based on the applicable rate for
578 the income reported in the year the payment is made. Except as
579 otherwise provided in subparagraph (iii) of this paragraph (b),
580 deferring the payment of the tax shall not affect the liability
581 for the tax, which is established as of the time of sale and shall
582 not be changed or altered by any subsequent events related or
583 unrelated to the casual sale of the property. If at any time the
584 installment note is sold, contributed, transferred or disposed of
585 in any manner and for any purpose by the original note holder, or
586 the original note holder is merged, liquidated, dissolved or
587 withdrawn from this state, then all deferred tax payments under
588 this section shall immediately become due and payable.

589 (iii) If the selling price of the property is
590 reduced by any alteration in the terms of an installment note,
591 including default by the purchaser, the gain to be recognized is
592 recomputed based on the adjusted selling price in the same manner
593 as for federal income tax purposes. The tax on this amount, less



594 the previously paid tax on the recognized gain, is payable over
595 the period of the remaining installments. If the tax on the
596 previously recognized gain has been paid in full to this state,
597 the return on which the payment was made may be amended for this
598 purpose only. The statute of limitations in Section 27-7-49 shall
599 not bar an amended return for this purpose.

600 (c) Reserves of insurance companies. In the case of
601 insurance companies, any amounts in excess of the legally required
602 reserves shall be included as gross income.

603 (d) Affiliated companies or persons. As regards sales,
604 exchanges or payments for services from one to another of
605 affiliated companies or persons or under other circumstances where
606 the relation between the buyer and seller is such that gross
607 proceeds from the sale or the value of the exchange or the payment
608 for services are not indicative of the true value of the subject
609 matter of the sale, exchange or payment for services, the
610 commissioner shall prescribe uniform and equitable rules for
611 determining the true value of the gross income, gross sales,
612 exchanges or payment for services, or require consolidated returns
613 of affiliates.

614 (e) Alimony and separate maintenance payments. The
615 federal rules, regulations and revenue procedures in determining
616 the deductibility and taxability of alimony payments shall be
617 followed in this state.

618 (f) Reimbursement for expenses of moving. There shall
619 be included in gross income (as compensation for services) any
620 amount received or accrued, directly or indirectly, by an
621 individual as a payment for or reimbursement of expenses of moving
622 from one residence to another residence which is attributable to
623 employment or self-employment.

624 (3) In the case of taxpayers other than residents, gross
625 income includes gross income from sources within this state.



626 (4) The words "gross income" do not include the following
627 items of income which shall be exempt from taxation under this
628 article:

629 (a) The proceeds of life insurance policies and
630 contracts paid upon the death of the insured. However, the income
631 from the proceeds of such policies or contracts shall be included
632 in the gross income.

633 (b) The amount received by the insured as a return of
634 premium or premiums paid by him under life insurance policies,
635 endowment, or annuity contracts, either during the term or at
636 maturity or upon surrender of the contract.

637 (c) The value of property acquired by gift, bequest,
638 devise or descent, but the income from such property shall be
639 included in the gross income.

640 (d) Interest upon the obligations of the United States
641 or its possessions, or securities issued under the provisions of
642 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the
643 War Finance Corporation, or obligations of the State of
644 Mississippi or political subdivisions thereof.

645 (e) The amounts received through accident or health
646 insurance as compensation for personal injuries or sickness, plus
647 the amount of any damages received for such injuries or such
648 sickness or injuries, or through the War Risk Insurance Act, or
649 any law for the benefit or relief of injured or disabled members
650 of the military or naval forces of the United States.

651 (f) Income received by any religious denomination or by
652 any institution or trust for moral or mental improvements,
653 religious, Bible, tract, charitable, benevolent, fraternal,
654 missionary, hospital, infirmary, educational, scientific,
655 literary, library, patriotic, historical or cemetery purposes or
656 for two (2) or more of such purposes, if such income be used
657 exclusively for carrying out one or more of such purposes.



658 (g) Income received by a domestic corporation which is
659 "taxable in another state" as this term is defined in this
660 article, derived from business activity conducted outside this
661 state. Domestic corporations taxable both within and without the
662 state shall determine Mississippi income on the same basis as
663 provided for foreign corporations under the provisions of this
664 article.

665 (h) In case of insurance companies, there shall be
666 excluded from gross income such portion of actual premiums
667 received from an individual policyholder as is paid back or
668 credited to or treated as an abatement of premiums of such
669 policyholder within the taxable year.

670 (i) Income from dividends that has already borne a tax
671 as dividend income under the provisions of this article, when such
672 dividends may be specifically identified in the possession of the
673 recipient.

674 (j) Amounts paid by the United States to a person as
675 added compensation for hazardous duty pay as a member of the Armed
676 Forces of the United States in a combat zone designated by
677 Executive Order of the President of the United States.

678 (k) Amounts received as retirement allowances,
679 pensions, annuities or optional retirement allowances paid under
680 the federal Social Security Act, the Railroad Retirement Act, the
681 Federal Civil Service Retirement Act, or any other retirement
682 system of the United States government, retirement allowances paid
683 under the Mississippi Public Employees' Retirement System,
684 Mississippi Highway Safety Patrol Retirement System or any other
685 retirement system of the State of Mississippi or any political
686 subdivision thereof. The exemption allowed under this paragraph
687 (k) shall be available to the spouse or other beneficiary at the
688 death of the primary retiree.

689 (l) Amounts received as retirement allowances,
690 pensions, annuities or optional retirement allowances paid by any



691 public or governmental retirement system not designated in
692 subsection (k) or any private retirement system or plan of which
693 the recipient was a member at any time during the period of his
694 employment. Amounts received as a distribution under a Roth
695 individual retirement account shall be treated in the same manner
696 as provided under the Internal Revenue Code of 1986, as amended.
697 The exemption allowed under this paragraph (l) shall be available
698 to the spouse or other beneficiary at the death of the primary
699 retiree.

700 (m) Compensation not to exceed the aggregate sum of
701 Five Thousand Dollars (\$5,000.00) for any taxable year received by
702 a member of the National Guard or Reserve Forces of the United
703 States as payment for inactive duty training, active duty training
704 and state active duty.

705 (n) Compensation received for active service as a
706 member below the grade of commissioned officer and so much of the
707 compensation as does not exceed the aggregate sum of Five Hundred
708 Dollars (\$500.00) per month received for active service as a
709 commissioned officer in the Armed Forces of the United States for
710 any month during any part of which such members of the Armed
711 Forces (i) served in a combat zone as designated by Executive
712 Order of the President of the United States; or (ii) was
713 hospitalized as a result of wounds, disease or injury incurred
714 while serving in such combat zone.

715 (o) The proceeds received from federal and state
716 forestry incentives programs.

717 (p) The amount representing the difference between the
718 increase of gross income derived from sales for export outside the
719 United States as compared to the preceding tax year wherein gross
720 income from export sales was highest, and the net increase in
721 expenses attributable to such increased exports. In the absence
722 of direct accounting the ratio of net profits to total sales may
723 be applied to the increase in export sales. This paragraph (p)



724 shall only apply to businesses located in this state engaging in
725 the international export of Mississippi goods and services. Such
726 goods or services shall have at least fifty percent (50%) of value
727 added at a location in Mississippi.

728 (q) Amounts paid by the federal government for the
729 construction of soil conservation systems as required by a
730 conservation plan adopted pursuant to 16 USCS 3801 et seq.

731 (r) The amount deposited in a medical savings account,
732 and any interest accrued thereon, that is a part of a medical
733 savings account program as specified in the Medical Savings
734 Account Act under Sections 71-9-1 through 71-9-9; provided,
735 however, that any amount withdrawn from such account for purposes
736 other than paying eligible medical expense or to procure health
737 coverage, shall be included in gross income.

738 (s) Amounts paid by the Mississippi Soil and Water
739 Conservation Commission from the Mississippi Soil and Water
740 Cost-Share Program for the installation of water quality best
741 management practices.

742 (t) Dividends received by a holding corporation, as
743 defined in Section 27-13-1, from a subsidiary corporation, as
744 defined in Section 27-13-1.

745 (u) Interest, dividends, gains or income of any kind on
746 any account in the Mississippi Affordable College Savings Trust
747 Fund, as established in Sections 37-155-101 through 37-155-125, to
748 the extent that such amounts remain on deposit in the MACS Trust
749 Fund or are withdrawn pursuant to a qualified withdrawal, as
750 defined in Section 37-155-105.

751 (v) Interest, dividends or gains accruing on the
752 payments made pursuant to a prepaid tuition contract, as provided
753 for in Section 37-155-17.

754 (w) Income resulting from transactions with a related
755 member where the related member subject to tax under this chapter
756 was required to, and did in fact, add back the expense of such



757 transactions as required by Section 27-7-17(2). Under no
758 circumstances may the exclusion from income exceed the deduction
759 add back of the related member, nor shall the exclusion apply to
760 any income otherwise excluded under this chapter.

761 (5) Prisoners of war, missing in action-taxable status.

762 (a) Members of the Armed Forces. Gross income does not
763 include compensation received for active service as a member of
764 the Armed Forces of the United States for any month during any
765 part of which such member is in a missing status, as defined in
766 paragraph (d) of this subsection, during the Vietnam Conflict as a
767 result of such conflict.

768 (b) Civilian employees. Gross income does not include
769 compensation received for active service as an employee for any
770 month during any part of which such employee is in a missing
771 status during the Vietnam Conflict as a result of such conflict.

772 (c) Period of conflict. For the purpose of this
773 subsection, the Vietnam Conflict began February 28, 1961, and ends
774 on the date designated by the President by Executive Order as the
775 date of the termination of combatant activities in Vietnam. For
776 the purpose of this subsection, an individual is in a missing
777 status as a result of the Vietnam Conflict if immediately before
778 such status began he was performing service in Vietnam or was
779 performing service in Southeast Asia in direct support of military
780 operations in Vietnam. "Southeast Asia" as used in this paragraph
781 is defined to include Cambodia, Laos, Thailand and waters adjacent
782 thereto.

783 (d) "Missing status" means the status of an employee or
784 member of the Armed Forces who is in active service and is
785 officially carried or determined to be absent in a status of (i)
786 missing; (ii) missing in action; (iii) interned in a foreign
787 country; (iv) captured, beleaguered or besieged by a hostile
788 force; or (v) detained in a foreign country against his will; but
789 does not include the status of an employee or member of the Armed



790 Forces for a period during which he is officially determined to be
791 absent from his post of duty without authority.

792 (e) "Active service" means active federal service by an
793 employee or member of the Armed Forces of the United States in an
794 active duty status.

795 (f) "Employee" means one who is a citizen or national
796 of the United States or an alien admitted to the United States for
797 permanent residence and is a resident of the State of Mississippi
798 and is employed in or under a federal executive agency or
799 department of the Armed Forces.

800 (g) "Compensation" means (i) basic pay; (ii) special
801 pay; (iii) incentive pay; (iv) basic allowance for quarters; (v)
802 basic allowance for subsistence; and (vi) station per diem
803 allowances for not more than ninety (90) days.

804 (h) If refund or credit of any overpayment of tax for
805 any taxable year resulting from the application of subsection (5)
806 of this section is prevented by the operation of any law or rule
807 of law, such refund or credit of such overpayment of tax may,
808 nevertheless, be made or allowed if claim therefor is filed with
809 the State Tax Commission within three (3) years after the date of
810 the enactment of this subsection.

811 (i) The provisions of this subsection shall be
812 effective for taxable years ending on or after February 28, 1961.

813 (6) A shareholder of an S corporation, as defined in Section
814 27-8-3(1)(g), shall take into account the income, loss, deduction
815 or credit of the S corporation only to the extent provided in
816 Section 27-8-7(2).

817 SECTION 3. Section 27-7-17, Mississippi Code of 1972, is
818 amended as follows:

819 27-7-17. In computing taxable income, there shall be allowed
820 as deductions:

821 (1) **Business deductions.**



822 (a) Business expenses. All the ordinary and necessary
823 expenses paid or incurred during the taxable year in carrying on
824 any trade or business, including a reasonable allowance for
825 salaries or other compensation for personal services actually
826 rendered; nonreimbursable traveling expenses incident to current
827 employment, including a reasonable amount expended for meals and
828 lodging while away from home in the pursuit of a trade or
829 business; and rentals or other payments required to be made as a
830 condition of the continued use or possession, for purposes of the
831 trade or business of property to which the taxpayer has not taken
832 or is not taking title or in which he had no equity. Expense
833 incurred in connection with earning and distributing nontaxable
834 income is not an allowable deduction. Limitations on
835 entertainment expenses shall conform to the provisions of the
836 Internal Revenue Code of 1986.

837 (b) Interest. All interest paid or accrued during the
838 taxable year on business indebtedness, except interest upon the
839 indebtedness for the purchase of tax-free bonds, or any stocks,
840 the dividends from which are nontaxable under the provisions of
841 this article; provided, however, in the case of securities
842 dealers, interest payments or accruals on loans, the proceeds of
843 which are used to purchase tax-exempt securities, shall be
844 deductible if income from otherwise tax-free securities is
845 reported as income. Investment interest expense shall be limited
846 to investment income. Interest expense incurred for the purchase
847 of treasury stock, to pay dividends, or incurred as a result of an
848 undercapitalized affiliated corporation may not be deducted unless
849 an ordinary and necessary business purpose can be established to
850 the satisfaction of the commissioner. For the purposes of this
851 paragraph, the phrase "interest upon the indebtedness for the
852 purchase of tax-free bonds" applies only to the indebtedness
853 incurred for the purpose of directly purchasing tax-free bonds and
854 does not apply to any other indebtedness incurred in the regular



855 course of the taxpayer's business. Any corporation, association,
856 organization or other entity taxable under Section 27-7-23(c)
857 shall allocate interest expense as provided in Section
858 27-7-23(c) (3)(I).

859 (c) Taxes. Taxes paid or accrued within the taxable
860 year, except state and federal income taxes, excise taxes based on
861 or measured by net income, estate and inheritance taxes, gift
862 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
863 use taxes unless incurred as an item of expense in a trade or
864 business or in the production of taxable income. In the case of
865 an individual, taxes permitted as an itemized deduction under the
866 provisions of subsection (3)(a) of this section are to be claimed
867 thereunder.

868 (d) Business losses.

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

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

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

881 (f) Depreciation. A reasonable allowance for
882 exhaustion, wear and tear of property used in the trade or
883 business, or rental property, and depreciation upon buildings
884 based upon their reasonable value as of March 16, 1912, if
885 acquired prior thereto, and upon cost if acquired subsequent to
886 that date.



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

894 (h) Contributions or gifts. Except as otherwise
895 provided in subsection (3)(a) of this section for individuals,
896 contributions or gifts made by corporations within the taxable
897 year to corporations, organizations, associations or institutions,
898 including Community Chest funds, foundations and trusts created
899 solely and exclusively for religious, charitable, scientific or
900 educational purposes, or for the prevention of cruelty to children
901 or animals, no part of the net earnings of which inure to the
902 benefit of any private stockholder or individual. This deduction
903 shall be allowed in an amount not to exceed twenty percent (20%)
904 of the net income. Such contributions or gifts shall be allowable
905 as deductions only if verified under rules and regulations
906 prescribed by the commissioner, with the approval of the Governor.
907 Contributions made in any form other than cash shall be allowed as
908 a deduction, subject to the limitations herein provided, in an
909 amount equal to the actual market value of the contributions at
910 the time the contribution is actually made and consummated.

911 (i) Reserve funds - insurance companies. In the case
912 of insurance companies the net additions required by law to be
913 made within the taxable year to reserve funds when such reserve
914 funds are maintained for the purpose of liquidating policies at
915 maturity.

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



919 (k) Contributions to employee pension plans.
920 Contributions made by an employer to a plan or a trust forming
921 part of a pension plan, stock bonus plan, disability or
922 death-benefit plan, or profit-sharing plan of such employer for
923 the exclusive benefit of some or all of his, their, or its
924 employees, or their beneficiaries, shall be deductible from his,
925 their, or its income only to the extent that, and for the taxable
926 year in which, the contribution is deductible for federal income
927 tax purposes under the Internal Revenue Code of 1986 and any other
928 provisions of similar purport in the Internal Revenue Laws of the
929 United States, and the rules, regulations, rulings and
930 determinations promulgated thereunder, provided that:

931 (i) The plan or trust be irrevocable.

932 (ii) The plan or trust constitute a part of a
933 pension plan, stock bonus plan, disability or death-benefit plan,
934 or profit-sharing plan for the exclusive benefit of some or all of
935 the employer's employees and/or officers, or their beneficiaries,
936 for the purpose of distributing the corpus and income of the plan
937 or trust to such employees and/or officers, or their
938 beneficiaries.

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

942 Contributions to all plans or to all trusts of real or
943 personal property (or real and personal property combined) or to
944 insured plans created under a retirement plan for which provision
945 has been made under the laws of the United States of America,
946 making such contributions deductible from income for federal
947 income tax purposes, shall be deductible only to the same extent
948 under the Income Tax Laws of the State of Mississippi.

949 (l) Net operating loss carrybacks and carryovers. A
950 net operating loss for any taxable year ending after December 31,
951 1993, and taxable years thereafter, shall be a net operating loss



952 carryback to each of the three (3) taxable years preceding the
953 taxable year of the loss. If the net operating loss for any
954 taxable year is not exhausted by carrybacks to the three (3)
955 taxable years preceding the taxable year of the loss, then there
956 shall be a net operating loss carryover to each of the fifteen
957 (15) taxable years following the taxable year of the loss
958 beginning with any taxable year after December 31, 1991.

959 For any taxable year ending after December 31, 1997, the
960 period for net operating loss carrybacks and net operating loss
961 carryovers shall be the same as those established by the Internal
962 Revenue Code and the rules, regulations, rulings and
963 determinations promulgated thereunder.

964 The term "net operating loss," for the purposes of this
965 paragraph, shall be the excess of the deductions allowed over the
966 gross income; provided, however, the following deductions shall
967 not be allowed in computing same:

968 (i) No net operating loss deduction shall be
969 allowed.

970 (ii) No personal exemption deduction shall be
971 allowed.

972 (iii) Allowable deductions which are not
973 attributable to taxpayer's trade or business shall be allowed only
974 to the extent of the amount of gross income not derived from such
975 trade or business.

976 Any taxpayer entitled to a carryback period as provided by
977 this paragraph may elect to relinquish the entire carryback period
978 with respect to a net operating loss for any taxable year ending
979 after December 31, 1991. The election shall be made in the manner
980 prescribed by the State Tax Commission and shall be made by the
981 due date, including extensions of time, for filing the taxpayer's
982 return for the taxable year of the net operating loss for which
983 the election is to be in effect. The election, once made for any
984 taxable year, shall be irrevocable for that taxable year.



985 (m) Amortization of pollution or environmental control
986 facilities. Allowance of deduction. Every taxpayer, at his
987 election, shall be entitled to a deduction for pollution or
988 environmental control facilities to the same extent as that
989 allowed under the Internal Revenue Code and the rules,
990 regulations, rulings and determinations promulgated thereunder.

991 (n) Dividend distributions - real estate investment
992 trusts. "Real estate investment trust" (hereinafter referred to
993 as REIT) shall have the meaning ascribed to such term in Section
994 856 of the federal Internal Revenue Code of 1986, as amended. A
995 REIT is allowed a dividend distributed deduction if the dividend
996 distributions meet the requirements of Section 857 or are
997 otherwise deductible under Section 858 or 860, federal Internal
998 Revenue Code of 1986, as amended. In addition:

999 (i) A dividend distributed deduction shall only be
1000 allowed for dividends paid by a publicly traded REIT. A qualified
1001 REIT subsidiary shall be allowed a dividend distributed deduction
1002 if its owner is a publicly traded REIT.

1003 (ii) Income generated from real estate contributed
1004 or sold to a REIT by a shareholder or related party shall not give
1005 rise to a dividend distributed deduction, unless the shareholder
1006 or related party would have received the dividend distributed
1007 deduction under this chapter.

1008 (iii) A holding corporation receiving a dividend
1009 from a REIT shall not be allowed the deduction in Section
1010 27-7-15(4)(t).

1011 (iv) Any REIT not allowed the dividend distributed
1012 deduction in the federal Internal Revenue Code of 1986, as
1013 amended, shall not be allowed a dividend distributed deduction
1014 under this chapter.

1015 The commissioner is authorized to promulgate rules and
1016 regulations consistent with the provisions in Section 269 of the



1017 federal Internal Revenue Code of 1986, as amended, so as to
1018 prevent the evasion or avoidance of state income tax.

1019 (o) Contributions to college savings trust fund
1020 accounts. Contributions or payments to a Mississippi Affordable
1021 College Savings Program account are deductible as provided under
1022 Section 37-155-113. Payments made under a prepaid tuition
1023 contract entered into under the Mississippi Prepaid Affordable
1024 College Tuition Program are deductible as provided under Section
1025 37-155-17.

1026 (2) **Restrictions on the deductibility of certain intangible**
1027 **expenses and interest expenses with a related member.**

1028 (a) As used in this subsection (2):

1029 (i) "Intangible expenses and costs" include:

1030 1. Expenses, losses and costs for, related

1031 to, or in connection directly or indirectly with the direct or

1032 indirect acquisition, use, maintenance or management, ownership,

1033 sale, exchange or any other disposition of intangible property to

1034 the extent such amounts are allowed as deductions or costs in

1035 determining taxable income under this chapter;

1036 2. Expenses or losses related to or incurred

1037 in connection directly or indirectly with factoring transactions

1038 or discounting transactions;

1039 3. Royalty, patent, technical and copyright

1040 fees;

1041 4. Licensing fees; and

1042 5. Other similar expenses and costs.

1043 (ii) "Intangible property" means patents, patent

1044 applications, trade names, trademarks, service marks, copyrights

1045 and similar types of intangible assets.

1046 (iii) "Interest expenses and cost" means amounts

1047 directly or indirectly allowed as deductions for purposes of

1048 determining taxable income under this chapter to the extent such

1049 interest expenses and costs are directly or indirectly for,



1050 related to, or in connection with the direct or indirect
1051 acquisition maintenance, management, ownership, sale, exchange or
1052 disposition of intangible property.

1053 (iv) "Related member" means an entity or person
1054 that, with respect to the taxpayer during all or any portion of
1055 the taxable year, is a related entity, a component member as
1056 defined in the Internal Revenue Code, or is an entity or a person
1057 to or from whom there is attribution of stock ownership in
1058 accordance with Section 1563(e) of the Internal Revenue Code.

1059 (vi) "Related entity" means:

1060 1. A stockholder who is an individual or a
1061 member of the stockholder's family, as defined in regulations
1062 prescribed by the commissioner, if the stockholder and the members
1063 of the stockholder's family own, directly, indirectly,
1064 beneficially or constructively, in the aggregate, at least fifty
1065 percent (50%) of the value of the taxpayer's outstanding stock;

1066 2. A stockholder, or a stockholder's
1067 partnership, limited liability company, estate, trust or
1068 corporation, if the stockholder and the stockholder's
1069 partnerships, limited liability companies, estates, trusts and
1070 corporations own, directly, indirectly, beneficially or
1071 constructively, in the aggregate, at least fifty percent (50%) of
1072 the value of the taxpayer's outstanding stock;

1073 3. A corporation, or a party related to the
1074 corporation in a manner that would require an attribution of stock
1075 from the corporation to the party or from the party to the
1076 corporation, if the taxpayer owns, directly, indirectly,
1077 beneficially or constructively, at least fifty percent (50%) of
1078 the value of the corporation's outstanding stock under regulation
1079 prescribed by the commissioner;

1080 4. Any entity or person which would be a
1081 related member under this section if the taxpayer were considered
1082 a corporation for purposes of this section.



1083 (b) In computing net income, a taxpayer shall add back
1084 otherwise deductible interest expenses and costs and intangible
1085 expenses and costs directly or indirectly paid, accrued to or
1086 incurred, in connection directly or indirectly with one or more
1087 direct or indirect transactions with one or more related members.

1088 (c) The adjustments required by this subsection shall
1089 not apply to such portion of interest expenses and costs and
1090 intangible expenses and costs that the taxpayer can establish
1091 meets one (1) of the following:

1092 (i) The related member directly or indirectly
1093 paid, accrued or incurred such portion to a person during the same
1094 income year who is not a related member, and the transaction
1095 giving rise to the interest expenses and costs or the intangible
1096 expenses and costs between the taxpayer and the related member did
1097 not have the purpose of avoiding any portion of the tax due under
1098 this chapter; or

1099 (ii) The transaction giving rise to the interest
1100 expenses and costs or intangible expenses and costs between the
1101 taxpayer and related member was done for a valid business purpose
1102 and the related member to which the income is paid is subject to
1103 taxation by another state at a tax rate equal to or higher than
1104 the rate applicable in Mississippi.

1105 (d) Nothing in this subsection shall require a taxpayer
1106 to add to its net income more than once any amount of interest
1107 expenses and costs or intangible expenses and costs that the
1108 taxpayer pays, accrues or incurs to a related member.

1109 (e) The commissioner may prescribe such regulations as
1110 necessary or appropriate to carry out the purposes of this
1111 subsection, including, but not limited to, clarifying definitions
1112 of terms, rules of stock attribution, factoring and discount
1113 transactions.

1114 (3) Individual nonbusiness deductions.



1115 (a) The amount allowable for individual nonbusiness
1116 itemized deductions for federal income tax purposes, except the
1117 deduction for state income taxes paid, where the individual is
1118 eligible to elect, for the taxable year, to itemize deductions on
1119 his federal return; or

1120 (b) In lieu of the individual nonbusiness itemized
1121 deductions authorized in paragraph (a), for all purposes other
1122 than ordinary and necessary expenses paid or incurred during the
1123 taxable year in carrying on any trade or business, an optional
1124 standard deduction of:

1125 (i) Three Thousand Four Hundred Dollars
1126 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
1127 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
1128 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
1129 in the case of married individuals filing a joint or combined
1130 return;

1131 (ii) One Thousand Seven Hundred Dollars
1132 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
1133 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
1134 Three Hundred Dollars (\$2,300.00) for each calendar year
1135 thereafter in the case of married individuals filing separate
1136 returns;

1137 (iii) Three Thousand Four Hundred Dollars
1138 (\$3,400.00) in the case of a head of family; or

1139 (iv) Two Thousand Three Hundred Dollars
1140 (\$2,300.00) in the case of an individual who is not married.

1141 In the case of a husband and wife living together, having
1142 separate incomes, and filing combined returns, the standard
1143 deduction authorized may be divided in any manner they choose. In
1144 the case of separate returns by a husband and wife, the standard
1145 deduction shall not be allowed to either if the taxable income of
1146 one of the spouses is determined without regard to the standard
1147 deduction.



1148 (c) A nonresident individual shall be allowed the same
1149 individual nonbusiness deductions as are authorized for resident
1150 individuals in paragraph (a) or (b) of this subsection; however,
1151 the nonresident individual is entitled only to that proportion of
1152 the individual nonbusiness deductions as his net income from
1153 sources within the State of Mississippi bears to his total or
1154 entire net income from all sources.

1155 (3) Nothing in this section shall permit the same item to be
1156 deducted more than once, either in fact or in effect.

1157 SECTION 4. Section 27-7-23, Mississippi Code of 1972, is
1158 amended as follows:

1159 27-7-23. (a) **Definitions.**

1160 (1) "Doing business" means the operation of any
1161 business enterprise or activity in Mississippi for financial
1162 profit or economic gain, including, but not limited to, the
1163 following:

1164 (A) The regular maintenance of an office or other
1165 place of business in Mississippi; or

1166 (B) The regular maintenance in Mississippi of an
1167 inventory of merchandise or material for sale, distribution or
1168 manufacture, regardless of whether kept on the premises of the
1169 taxpayer or otherwise; or

1170 (C) The selling or distributing of merchandise to
1171 customers in Mississippi directly from a company-owned or operated
1172 vehicle when title to the merchandise is transferred from the
1173 seller or distributor to the customer at the time of the sale or
1174 distribution (transient selling); or

1175 (D) The regular rendering of service to clients or
1176 customers in Mississippi in person or by agents or employees; or

1177 (E) The owning, renting or operating of business
1178 or income-producing property, real or personal, in Mississippi; or



1179 (F) The performing of contracts, prime or sublet
1180 work, for the construction, repair or renovation of real or
1181 personal property.

1182 (2) "Business income" means income of any type or
1183 class, and from any activity that meets the relationship described
1184 in the transactional test or the functional test described in this
1185 paragraph (2). The classification of income by occasionally used
1186 labels, including, but not limited to, manufacturing income,
1187 compensation for services, sales income interest, dividends,
1188 rents, royalties, gains, operating income, and nonoperating income
1189 shall not be considered when determining whether income is
1190 business or nonbusiness income. All income of the taxpayer is
1191 business income unless clearly classifiable as nonbusiness income.
1192 A taxpayer seeking to overcome a classification of income as
1193 business income must establish by clear and convincing evidence
1194 that the income has been incorrectly classified.

1195 (A) Transactional test. Business income includes
1196 income arising from transactions and activity in the regular
1197 course of the taxpayer's trade or business.

1198 (i) If the transaction or activity is in the
1199 regular course of the taxpayer's trade or business, part of which
1200 trade or business is conducted within Mississippi, the resulting
1201 income of the transaction or activity is business income for
1202 Mississippi. Income may be business income even though the actual
1203 transaction or activity that gives rise to the income does not
1204 occur in Mississippi.

1205 (ii) For a transaction or activity to be in
1206 the regular course of the taxpayer's trade or business, the
1207 transactions or activity need not be one that frequently occurs in
1208 the trade or business, although most frequently occurring
1209 transactions or activities shall be considered to be in the
1210 regular course of a trade or business. It is sufficient to
1211 classify a transaction or activity as being in the regular course



1212 of a trade or business if it is reasonable to conclude
1213 transactions of that type are customary in the kind of trade or
1214 business being conducted or are within the scope of what the trade
1215 or business does.

1216 (B) Functional test. Business income includes
1217 income from tangible and intangible property if the acquisition,
1218 management and/or disposition of the property constitute integral
1219 parts of the taxpayer's regular trade or business operation.

1220 (i) Under the functional test, business
1221 income need not be derived from transactions or activities that
1222 are in the regular course of the taxpayer's own particular trade
1223 or business. It shall be sufficient if the property from which
1224 the income is derived is or was an integral, functional, necessary
1225 or operative component of the taxpayer's trade or business
1226 operations, part of which trade or business is or was conducted
1227 within this state.

1228 (ii) Income that is derived from isolated
1229 sales, leases, assignments, licenses and other infrequently
1230 occurring dispositions, transfers or transactions involving
1231 property, including transactions made in liquidation or the
1232 winding up of business is business income if the property is or
1233 was used in the taxpayer's trade or business operation. Income
1234 from the licensing of intangible assets, such as patents,
1235 copyrights, trademarks, service marks, goodwill, know-how, trade
1236 secrets and similar assets, that were developed or acquired for
1237 use by the taxpayer in his trade or business operations,
1238 constitute business income whether the licensing itself
1239 constituted the operation of a trade or business and whether the
1240 taxpayer remains in the same trade or business from or for which
1241 the intangible asset was developed or acquired.

1242 (iii) Under the functional test, income from
1243 intangible property is business income when the intangible
1244 property serves an operating function, as opposed to solely an



1245 investment function. The relevant inquiry shall focus on whether
1246 the property is or was held in furtherance of the taxpayer's trade
1247 or business, that is, on the objective characteristics of the
1248 intangible property's use or acquisition and its relation to the
1249 taxpayer and the taxpayer's activities. The functional test is
1250 not satisfied where the holding of the property is limited solely
1251 to an investment function as in the case where the holding of the
1252 property is limited to mere financial betterment of the taxpayer
1253 in general.

1254 (iv) If the property is or was held in
1255 furtherance of the taxpayer's trade or business beyond mere
1256 financial betterment, then income from the property may be
1257 business income even though the actual transaction or activity
1258 involving the property that gives rise to the income does not
1259 occur in Mississippi.

1260 (v) If, with respect to an item of property,
1261 a taxpayer takes a deduction from business income that is
1262 apportioned to Mississippi, or includes that item of property in
1263 the property factor, it is presumed that the item of property is
1264 or was integral to the taxpayer's trade or business operations.
1265 No presumption arises from the absence of any of this action.

1266 (vi) Application of the functional test is
1267 generally unaffected by the form of the property. Income arising
1268 from intangible property is business income when the intangible
1269 property itself or the underlying value of the intangible property
1270 is or was an integral, functional, necessary or operative
1271 component to the taxpayer's trade or business operation.

1272 Therefore, while treatment of income derived from transactions
1273 involving intangible property as business income may be supported
1274 by a finding that the issuer of the intangible property and the
1275 taxpayer are engaged in the same trade or business, establishment
1276 of such a relationship is not the exclusive basis for concluding
1277 that the income constitutes business income. It is sufficient to



1278 support a finding of business income if the holding of the
1279 intangible property served an operational rather than an
1280 investment function.

1281 (3) "Nonbusiness income" means all income that does not
1282 meet the definition of business income.

1283 (4) "Commercial domicile" means the principal place
1284 from which the trade or business of the taxpayer is directed or
1285 managed.

1286 (5) "State" means any state of the United States, the
1287 District of Columbia, the Commonwealth of Puerto Rico, any
1288 territory or possession of the United States, and any foreign
1289 country or political subdivision thereof.

1290 (b) **Nonresident individuals, partnerships, trusts and**
1291 **estates.**

1292 (1) The tax imposed by this article shall apply to the
1293 entire net income of a taxable nonresident derived from
1294 employment, trade, business, professional, personal service or
1295 other activity for financial gain or profit, performed or carried
1296 on within Mississippi, including the rental of real or personal
1297 property located within this state or for use herein and including
1298 the sale or exchange or other disposition of tangible or
1299 intangible property having a situs in Mississippi.

1300 (2) Income derived from trade, business or other
1301 commercial activity shall be taxed to the extent that it is
1302 derived from such activity within this state. Mississippi net
1303 income shall be determined * * * in the * * * manner * * *
1304 prescribed by the commissioner for the allocation and/or
1305 apportionment of income of foreign corporations having income from
1306 sources both within and without the state.

1307 (3) A taxable nonresident shall be allowed to deduct
1308 expenses, interest, taxes, losses, bad debts, depreciation and
1309 similar business expenses only to the extent that they are
1310 allowable under this article and are attributable to the



1311 production of income allocable to and taxable by the State of
1312 Mississippi. As to allowable deductions essentially personal in
1313 nature, such as contributions to charitable organizations, medical
1314 expenses, taxes, interest and the optional standard deduction,
1315 such taxable nonresident shall be allowed deductions therefor in
1316 the ratio that the net income from sources within Mississippi
1317 bears to the total net income from all sources of such taxable
1318 nonresident, computed as if such taxable nonresident were a
1319 resident of Mississippi.

1320 (c) **Foreign corporations, associations, organizations and**
1321 **other entities.**

1322 (1) Corporations and organizations required to file.
1323 All foreign corporations and other organizations which have
1324 obtained a certificate of authority from the Secretary of State to
1325 do business in Mississippi, or corporations or organizations which
1326 are in fact doing business in Mississippi, are subject to the
1327 income tax levy and are required to file annual income tax returns
1328 unless the corporation or organization is specifically exempt from
1329 tax by this article.

1330 (2) Allocation and apportionment of income. Except as
1331 provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and
1332 27-7-24.7, Mississippi Code of 1972, any corporation or
1333 organization having business income from business activity which
1334 is taxable both within and without this state shall allocate and
1335 apportion its net business income as prescribed by the
1336 commissioner. If the business income of the corporation is
1337 derived solely from property owned or business done in this state
1338 and the corporation is not taxable in another state, the entire
1339 business income shall be allocated to this state. * * * A
1340 corporation is taxable in another state if, * * * in that state
1341 the corporation is subject to a net income tax, or a franchise tax
1342 measured by net income, or * * * if that state has jurisdiction to
1343 subject the corporation to a net income tax regardless of



1344 whether * * * the state does or does not subject the corporation
1345 to a net income tax.

1346 * * *

1347 (3) Nonbusiness income. Rents and royalties from real
1348 or tangible personal property, capital gains, interest, dividends,
1349 or patent or copyright royalties, to the extent that they
1350 constitute nonbusiness income, shall be allocated as follows:

1351 (A) Net rents and royalties from real property are
1352 allocable to the state in which the property is located.

1353 (B) Net rents and royalties from tangible personal
1354 property are allocable to the state in which the property is used,
1355 or to this state in their entirety if the corporation's commercial
1356 domicile is in this state and the corporation is not organized
1357 under the laws of or taxable in the state in which the property is
1358 utilized.

1359 (C) Capital gains and losses from sales of real
1360 property are allocable to the state in which the property is
1361 located.

1362 (D) Capital gains and losses from sales of
1363 tangible personal property are allocable to the state in which the
1364 property is located, or to this state if the corporation's
1365 commercial domicile is in this state and the corporation is not
1366 taxable in the state in which the property had a situs.

1367 (E) Capital gains and losses from sales of
1368 intangible personal property are allocable to the state of the
1369 corporation's commercial domicile.

1370 (F) Interest and dividends are allocable to the
1371 state of the corporation's commercial domicile.

1372 (G) Patent and copyright royalties are allocable
1373 to the state in which the patent or copyright is utilized by the
1374 payer, or to this state if and to the extent that the patent or
1375 copyright is utilized by the payer in a state in which the



1376 corporation is not taxable and the corporation's commercial
1377 domicile is in this state.

1378 (H) Any other nonbusiness income shall be
1379 allocated as prescribed by the commissioner.

1380 (I) All expenses connected with earning
1381 nonbusiness income, such as interest, taxes, general and
1382 administrative expenses and such other expenses relating to the
1383 production of nonbusiness income, shall be deducted from gross
1384 nonbusiness income. Nonbusiness interest expense shall be
1385 computed by using the ratio of nonbusiness assets to total assets
1386 applied to total interest expense.

1387 (d) **Foreign lenders.**

1388 (1) In the case of any foreign lender, (corporation,
1389 association, organization, individual, partnership, trusts or
1390 estates), other than: (A) a foreign insurance company subject to
1391 certification by the Commissioner of Insurance, as provided by
1392 Section 83-21-1 et seq.; or (B) a foreign lender qualified under
1393 the general laws of this state to do business herein; or (C) a
1394 foreign lender which maintains an office or place of business
1395 within this state; or (D) lenders that sold properties in this
1396 state and financed such sale and reported on the installment
1397 method, interest income received or accrued on or after January 1,
1398 1977, from loans secured by real estate or from lending on the
1399 security of real estate located within this state shall be
1400 excluded from Mississippi gross income and exempt from the
1401 Mississippi income tax levy and the reporting requirements.

1402 (2) In the case of any foreign lender exempted in
1403 paragraph (1) of this subsection, interest income received on any
1404 loan finalized or consummated after January 1, 1977, shall be
1405 excluded from Mississippi gross income and the net profits derived
1406 therefrom shall be exempt from the Mississippi income tax levy for
1407 the life of such loan.



1408 (e) **Insurance companies.** Insurance companies, other than
1409 life insurance companies, deriving premium income from within and
1410 without the state, may determine their Mississippi net income from
1411 underwriting by apportioning to this state a part of their total
1412 net underwriting income by such processes or formulas of general
1413 apportionment as are prescribed by the commissioner; provided that
1414 a company adopting this method of reporting for any year must
1415 adhere to said method of reporting for subsequent years, unless
1416 permission is granted by the commissioner to change to a different
1417 method of reporting; and provided that all affiliated companies of
1418 the same group shall use the same method of reporting.

1419 (f) **Bond requirements.** Any individual or corporation
1420 subject to the tax imposed by this article, engaged in the
1421 business of performing contracts which may require the payment of
1422 net income taxes, may be required by the commissioner, before
1423 entering into the performance of any contract or contracts the
1424 consideration of which is more than Ten Thousand Dollars
1425 (\$10,000.00), to execute and file a good and valid bond with a
1426 surety company authorized to do business in this state, or with
1427 sufficient sureties to be approved by the commissioner,
1428 conditioned that all taxes which may accrue to the State of
1429 Mississippi will be paid when due. Provided, however, that such
1430 bond shall not exceed five percent (5%) of the total contracts
1431 entered into during the taxable period, and, provided further,
1432 that any taxpayer, in lieu of furnishing such bond, may pay the
1433 maximum sum required herein as advance payment of taxes due on the
1434 net income realized from any contract or contracts performed or
1435 completed in this state.

1436 SECTION 5. Section 27-7-24.3, Mississippi Code of 1972, is
1437 amended as follows:

1438 27-7-24.3. (1) The receipts factor is a fraction, the
1439 numerator of which is the receipts of the taxpayer in this state
1440 during the taxable year and the denominator of which is the



1441 receipts of the taxpayer within and without this state during the
1442 taxable year. The method of calculating receipts for purposes of
1443 the denominator is the same as the method used in determining
1444 receipts for purposes of the numerator. The receipts factor shall
1445 include only those receipts described herein which constitute
1446 business income and are included in the computation of the
1447 apportionable income base for the taxable year.

1448 (2) The numerator of the receipts factor includes receipts
1449 from the lease or rental of real property owned by the taxpayer if
1450 the property is located within this state on receipts from the
1451 sublease of real property if the property is located within this
1452 state.

1453 (3) (a) Except as described in paragraph (b) of this
1454 subsection, the numerator of the receipts factor includes receipts
1455 from the lease or rental of tangible personal property owned by
1456 the taxpayer if the property is located within this state when it
1457 is first placed in service by the lessee.

1458 (b) Receipts from the lease or rental of transportation
1459 property owned by the taxpayer are included in the numerator of
1460 the receipts factor to the extent that the property is used in
1461 this state. The extent an aircraft will be deemed to be used in
1462 this state and the amount of the receipts that is to be included
1463 in the numerator of this state's receipts factor is determined by
1464 multiplying all the receipts from the lease or rental of the
1465 aircraft by a fraction, the numerator of which is the number of
1466 landings of the aircraft in this state and the denominator of
1467 which is the total number of landings of the aircraft. If the
1468 extent of the use of any transportation property within the state
1469 cannot be determined, then the property will be deemed to be used
1470 wholly in the state in which the property has its principal base
1471 of operations. A motor vehicle will be deemed to be used wholly
1472 in the state in which it is registered.



1473 (4) (a) The numerator of the receipts factor includes
1474 interest and fees or penalties in the nature of interest from
1475 loans secured by real property if the property is located within
1476 this state. If the property is located both within this state and
1477 one or more other states, the receipts described in this
1478 subsection are included in the numerator of the receipts factor if
1479 more than fifty percent (50%) of the fair market value of the real
1480 property is located within this state. If more than fifty percent
1481 (50%) of the fair market value of the real property is not located
1482 within any one state, then the receipts described in this
1483 subsection shall be included in the numerator of the receipts
1484 factor if the borrower is located in this state.

1485 (b) The determination of whether the real property
1486 securing a loan is located within this state shall be made as of
1487 the time the original agreement was made and any and all
1488 subsequent substitutions of collateral shall be disregarded.

1489 (5) The numerator of the receipts factor includes interest
1490 and fees or penalties in the nature of interest from loans not
1491 secured by real property if the borrower is located in this state.

1492 (6) The numerator of the receipts factor includes net gains
1493 from the sale of loans. Net gains from the sale of loans includes
1494 income recorded under coupon stripping rules of Section 1286 of
1495 the Internal Revenue Code, as in effect January 1, 1996.

1496 (a) The amount of net gains (but not less than zero)
1497 from the sale of loans secured by real property included in the
1498 numerator is determined by multiplying such net gains by a
1499 fraction the numerator of which is the amount included in the
1500 numerator of the receipts factor pursuant to subsection (4) of
1501 this section and the denominator of which is the total amount of
1502 interest and fees or penalties in the nature of interest from
1503 loans secured by real property.

1504 (b) The amount of net gains (but not less than zero)
1505 from the sale of loans not secured by real property included in



1506 the numerator is determined by multiplying such net gains by a
1507 fraction the numerator of which is the amount included in the
1508 numerator of the receipts factor pursuant to subsection (5) of
1509 this section and the denominator of which is the total amount of
1510 interest and fees or penalties in the nature of interest from
1511 loans not secured by real property.

1512 (7) The numerator of the receipts factor includes interest
1513 and fees or penalties in the nature of interest from credit card
1514 receivables and receipts from fees charged to card holders, such
1515 as annual fees, if the billing address of the card holder is in
1516 this state.

1517 (8) The numerator of the receipts factor includes net gains
1518 (but not less than zero) from the sale of credit card receivables
1519 multiplied by a fraction, the numerator of which is the amount
1520 included in the numerator of the receipts factor pursuant to
1521 subsection (7) of this section and the denominator of which is the
1522 taxpayer's total amount of interest and fees or penalties in the
1523 nature of interest from credit card receivables and fees charged
1524 to card holders.

1525 (9) The numerator of the receipts factor includes all credit
1526 card issuer's reimbursement fees multiplied by a fraction, the
1527 numerator of which is the amount included in the numerator of the
1528 receipts factor pursuant to subsection (7) of this section and the
1529 denominator of which is the taxpayer's total amount of interest
1530 and fees or penalties in the nature of interest from credit card
1531 receivables and fees charged to card holders.

1532 (10) The numerator of the receipts factor includes receipts
1533 from merchant discount if the commercial domicile of the merchant
1534 is in this state. Such receipts shall be computed net of any
1535 cardholder charge backs, but shall not be reduced by any
1536 interchange transaction fees or by any issuer's reimbursement fees
1537 paid to another for charges made by its card holders.



1538 (11) (a) (i) The numerator of the receipts factor includes
1539 loan servicing fees derived from loans secured by real property
1540 multiplied by a fraction the numerator of which is the amount
1541 included in the numerator of the receipts factor pursuant to
1542 subsection (4) of this section and the denominator of which is the
1543 total amount of interest and fees or penalties in the nature of
1544 interest from loans secured by real property.

1545 (ii) The numerator of the receipts factor includes
1546 loan servicing fees derived from loans not secured by real
1547 property multiplied by a fraction the numerator of which is the
1548 amount included in the numerator of the receipts factor pursuant
1549 to subsection (5) of this section and the denominator of which is
1550 the total amount of interest and fees or penalties in the nature
1551 of interest and fees or penalties in the nature of interest from
1552 loans not secured by real property.

1553 (b) In circumstances in which the taxpayer receives
1554 loan servicing fees for servicing either the secured or the
1555 unsecured loans of another, the numerator of the receipts factor
1556 shall include such fees if the borrower is located in this state.

1557 (12) The numerator of the receipts factor includes receipts
1558 from services not otherwise apportioned under this section if the
1559 service is performed in this state. If the service is performed
1560 both within and without this state, the numerator of the receipts
1561 factor includes receipts from services not otherwise apportioned
1562 under this section, if a greater proportion of the income
1563 producing activity is performed in this state based on cost of
1564 performance.

1565 (13) (a) Interest, dividends, net gains (but not less than
1566 zero) and other income from investment assets and activities and
1567 from trading assets and activities shall be included in the
1568 receipts factor. Investment assets and activities and trading
1569 assets and activities include but are not limited to: investment
1570 securities; trading account assets; federal funds; securities



1571 purchased and sold under agreements to resell or repurchase;
1572 options; future contracts; forward contracts; notional principal
1573 contracts such as swaps; equities; and foreign currency
1574 transactions. With respect to the investment and trading assets
1575 and activities described in subparagraphs (i) and (ii) of this
1576 paragraph (a), the receipts factor shall include the amounts
1577 described in such subparagraphs.

1578 (i) The receipts factor shall include the amount
1579 by which interest from federal funds sold and securities purchased
1580 under resale agreements exceeds interest expenses on federal funds
1581 purchased and securities sold under repurchase agreements.

1582 (ii) The receipts factor shall include the amount
1583 by which interest, dividends, gains and other income from trading
1584 assets and activities, including but not limited to assets and
1585 activities in the matched book, in the arbitrage book, and foreign
1586 currency transactions, exceed amounts paid in lieu of interest,
1587 amounts paid in lieu of dividends, and losses from such assets and
1588 activities.

1589 (b) The numerator of the receipts factor includes
1590 interest, dividends, net gains (but not less than zero) and other
1591 income from investment assets and activities and from trading
1592 assets and activities described in paragraph (a) of this
1593 subsection that are attributable to this state.

1594 (i) The amount of interest, dividends, net gains
1595 (but not less than zero) and other income from investment assets
1596 and activities in the investment account to be attributed to this
1597 state and included in the numerator is determined by multiplying
1598 all such income from such assets and activities by a fraction, the
1599 numerator of which is average value of such assets which are
1600 properly assigned to a regular place of business of the taxpayer
1601 within this state and the denominator of which is the average
1602 value of all such assets.



1603 (ii) The amount of interest from federal funds
1604 sold and purchased and from securities purchased under resale
1605 agreements and securities sold under repurchase agreements
1606 attributable to this state and included in the numerator is
1607 determined by multiplying the amount described in subparagraph (i)
1608 of paragraph (a) of this subsection (13) from such funds and such
1609 securities by a fraction, the numerator of which is the average
1610 value of federal funds sold and securities purchased under
1611 agreements to resell which are properly assigned to a regular
1612 place of business of the taxpayer within this state and the
1613 denominator of which is the average value of all such funds and
1614 such securities.

1615 (iii) The amount of interest, dividends, gains and
1616 other income from trading assets and activities, including but not
1617 limited to assets and activities in the matched book, in the
1618 arbitrage book and foreign currency transactions, (but excluding
1619 amounts described in subparagraphs (i) or (ii) of this paragraph),
1620 attributable to this state and included in the numerator is
1621 determined by multiplying the amount described in subparagraph
1622 (ii) of paragraph (a) of this subsection (13) by a fraction, the
1623 numerator of which is the average value of such trading assets
1624 which are properly assigned to a regular place of business of the
1625 taxpayer within this state and the denominator of which is the
1626 average value of all such assets.

1627 (iv) For purposes of this paragraph, average value
1628 shall be determined using the rules for determining the average
1629 value of tangible personal property set forth in subsections (3)
1630 and (4) of Section 27-7-24.5.

1631 (c) In lieu of using the method set forth in paragraph
1632 (b) of this subsection (13), the taxpayer may elect, or the
1633 commissioner may require in order to fairly represent the business
1634 activity of the taxpayer in this state, the use of the method set
1635 forth in this paragraph (c).



1636 (i) The amount of interest, dividends, net gains
1637 (but not less than zero) and other income from investment assets
1638 and activities in the investment account to be attributed to this
1639 state and included in the numerator is determined by multiplying
1640 all such income from such assets and activities by a fraction, the
1641 numerator of which is the gross income from such assets and
1642 activities which are properly assigned to a regular place of
1643 business of the taxpayer within the state and the denominator of
1644 which is the gross income from all such assets and activities.

1645 (ii) The amount of interest from federal funds
1646 sold and purchased and from securities purchased under resale
1647 agreements and securities sold under repurchase agreements
1648 attributable to this state and included in the numerator is
1649 determined by multiplying the amount described in subparagraph (i)
1650 of paragraph (a) of this subsection (13) from such funds and such
1651 securities by a fraction, the numerator of which is the gross
1652 income from such funds and such securities which are property
1653 assigned to a regular place of business and the taxpayer within
1654 this state and the denominator of which is the gross income from
1655 all such funds and such securities.

1656 (iii) The amount of interest, dividends, gains and
1657 other income from trading assets and activities, including but not
1658 limited to assets and activities in the matched book, in the
1659 arbitrage book and foreign currency transactions, but not
1660 excluding amounts described in subparagraphs (i) or (ii) of this
1661 paragraph (c), attributable to this state and included in the
1662 numerator is determined by multiplying the amount described in
1663 subparagraph (ii) of paragraph (a) of this subsection (13) by a
1664 fraction, the numerator of which is the gross income from such
1665 trading assets and activities which are properly assigned to a
1666 regular place of business of the taxpayer within this state and
1667 the denominator of which is the gross income from all such assets
1668 and activities.



1669 (d) If the taxpayer elects or is required by the
1670 commissioner to use the method set forth in paragraph (c) of this
1671 subsection (13), it shall use this method on all subsequent
1672 returns unless the taxpayer receives prior permission from the
1673 commissioner to use, or the commissioner requires a different
1674 method.

1675 (e) The taxpayer shall have the burden of proving that
1676 an investment asset or activity or trading asset or activity was
1677 properly assigned to a regular place of business outside of this
1678 state by demonstrating that the day-to-day decisions regarding the
1679 assets or activity occurred at a regular place of business outside
1680 this state. Where the day-to-day decisions regarding an
1681 investment asset or activity or trading asset or activity occur at
1682 more than one (1) regular place of business and one (1) such
1683 regular place of business is in this state and one (1) such
1684 regular place of business outside this state, such asset or
1685 activity shall be considered to be located at the regular place of
1686 business of the taxpayer where the investment or trading policies
1687 or guidelines with respect to the asset or activity are
1688 established. Unless the taxpayer demonstrates to the contrary,
1689 such policies and guidelines shall be presumed to be established
1690 at the commercial domicile of the taxpayer.

1691 (14) The numerator of the receipts factor includes all other
1692 receipts pursuant to the rules adopted by the commission.

1693 (15) All receipts which would be assigned under this section
1694 to a state in which the taxpayer is not taxable shall be included
1695 in the numerator of the receipts factor, if the taxpayer's
1696 commercial domicile is in this state.

1697 SECTION 6. Section 27-8-3, Mississippi Code of 1972, is
1698 amended as follows:

1699 27-8-3. (1) For purposes of this chapter, the following
1700 terms shall have meanings ascribed below:



1701 (a) "C corporation" means a corporation which is not an
1702 S corporation.

1703 (b) "Code" means the Internal Revenue Code of 1986, as
1704 amended and as applicable to the taxable period; references to
1705 sections of the Code shall be deemed to refer to corresponding
1706 provisions of prior and subsequent federal tax laws.

1707 (c) "Income attributable to the state" means items of
1708 income, loss, deduction or credit of the S corporation apportioned
1709 to this state under Section 27-7-23(c)(2) or allocated to this
1710 state under Section 27-7-23(c)(3).

1711 (d) "Income not attributable to the state" means all
1712 items of income, loss, deduction or credit of the S corporation
1713 other than income attributable to the state.

1714 (e) "Post-termination transition period" means that
1715 period defined in Section 1377(b)(1) of the Code.

1716 (f) "Pro rata share" means the portion of any item
1717 attributable to an S corporation shareholder for a taxable period
1718 determined in the manner provided in, and subject to any election
1719 made under, Section 1377(a) or 1362(e), as the case may be, of the
1720 Code.

1721 (g) "S corporation" means a corporation for which a
1722 valid election under Section 1362(a) of the Code is in effect.

1723 (h) "Taxable period" means any taxable year or portion
1724 of a taxable year during which a corporation is an S corporation.

1725 (2) Except as otherwise expressly provided or clearly
1726 appearing from the context, any term used in this chapter shall
1727 have the same meaning as when used in a comparable context in the
1728 Code, or in any statute relating to federal income taxes, in
1729 effect for the taxable period. Due consideration shall be given
1730 in the interpretation of this chapter to applicable sections of
1731 the Code in effect from time to time and to federal rulings and
1732 regulations interpreting such sections, provided such Code,



1733 rulings and regulations do not conflict with the provisions of
1734 this chapter.

1735 SECTION 7. Section 27-13-13, Mississippi Code of 1972, is
1736 amended as follows:

1737 27-13-13. (1) In the case of organizations doing business
1738 both within and without Mississippi, the value of the capital
1739 employed in this state shall be determined by first computing the
1740 ratio between (1) the real and tangible personal property owned in
1741 Mississippi and gross receipts from business carried on in
1742 Mississippi, and (2) the total real and tangible personal property
1743 owned and gross receipts wherever located and from wherever
1744 received. Said ratio then shall be applied to the total capital
1745 stock, surplus, undivided profits and true reserves and the result
1746 of that application shall be the capital employed in this state.
1747 Provided, however, that the amount of the determined capital in
1748 Mississippi shall in no case be less than the assessed value of
1749 the Mississippi property of the organization for the year
1750 preceding the year in which the return is due.

1751 (2) (a) For the purpose of this section, for tax returns
1752 for tax years ending before January 1, 1999, an organization which
1753 uses a formula method of apportionment in making income tax
1754 returns to this state shall determine its gross receipts from
1755 business carried on in Mississippi by applying to total unitary
1756 receipts the ratio achieved, or which would be achieved, by such
1757 formula and adding to the result of such application any
1758 nonunitary Mississippi receipts.

1759 (b) For the purpose of this section, for tax returns
1760 for tax years ending on or after January 1, 1999, the gross
1761 receipts of an organization that is required to use a formula
1762 method of apportionment in making income tax returns to this state
1763 shall be the same (both as to gross receipts from business carried
1764 on in Mississippi and gross receipts wherever located) as the
1765 gross receipts (or sales) used for the receipts or sales factor in



1766 the applicable income tax formula. However, gross receipts from
1767 business carried on in Mississippi, for the purposes of this
1768 section, shall also include any receipts from the taxpayer's
1769 business operations which are not apportioned but rather are
1770 directly allocated or assigned to this state. If the taxpayer is
1771 required to use a formula method of apportionment in making income
1772 tax returns which does not have a receipts or sales factor, then
1773 the receipts factor for the franchise tax formula shall be
1774 determined by regulation of the commission.

1775 (c) For purposes of this section, for tax returns for
1776 tax years ending on or after December 31, 2001, the ratio
1777 described in subsection (1) of this section shall include all
1778 gross receipts as specified in paragraph (b) of this subsection
1779 and where a taxpayer owns a direct or indirect interest in a
1780 flow-through entity, the taxpayer shall include in the ratio its
1781 portion of the flow-through entity's (i) real and tangible
1782 personal property owned in Mississippi and gross receipts from
1783 business carried on in Mississippi, and (ii) total real and
1784 tangible property owned and gross receipts wherever located and
1785 from wherever received. The taxpayer shall include its portion of
1786 the flow-through entity's assessed value of Mississippi property
1787 when determining its assessed value of Mississippi property. A
1788 flow-through entity's real property, tangible personal property,
1789 gross receipts and assessed value of property shall include its
1790 portion of these same items of any flow-through entity in which it
1791 owns a direct or indirect interest. For purposes of this section,
1792 flow-through entity is every form of organization other than a
1793 corporation, association or joint stock company or other
1794 organization which would qualify for exemption under Section
1795 27-13-63 if the organization were a corporation, association or
1796 joint stock company.

1797 SECTION 8. This act shall apply to taxable years beginning
1798 on or after January 1, 2001.



1799 SECTION 9. This act shall take effect and be in force from
1800 and after January 1, 2001.

