

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

To: Ways and Means

## 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 which results in a decrease  
437 in income or an increase in a loss being allocated or apportioned  
438 to this state. The commissioner may adjust transactions that  
439 constitute the shifting of income or are not "arms-length,"  
440 however implemented, including transactions between individuals  
441 and entities. The commissioner's determination of what  
442 constitutes an "arms-length" transaction and the shifting of  
443 income shall be prima facie correct.

444 (k) Sale or exchange of residence.

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

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

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

456 (1) Distributions by corporations.

457 (1) Distributions of the property of a corporation,  
458 including partial and complete liquidations, shall be recognized

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

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

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

491 paragraph (2) of this subsection for the purpose of determining  
492 the taxability of subsequent distributions by the corporations.

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

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

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

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

518 (8) Distributions of stock pursuant to order enforcing  
519 the Antitrust Laws. Any distribution of stock which is made  
520 pursuant to the order of any court enforcing the Antitrust Laws of  
521 the United States, or of any state, shall be a distribution which  
522 is not out of earnings and profits of the distributing  
523 corporation, but the value of the stock so distributed shall be



524 applied against and reduce the basis of the stock of the  
525 distributing corporation provided in subsection (d), and if in  
526 excess of such basis, such excess shall be taxable in the same  
527 manner as a gain from the sale or exchange of property.

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

530 27-7-15. (1) For the purposes of this article, except as  
531 otherwise provided, the term "gross income" means and includes the  
532 income of a taxpayer derived from salaries, wages, fees or  
533 compensation for service, of whatever kind and in whatever form  
534 paid, including income from governmental agencies and subdivisions  
535 thereof; or from professions, vocations, trades, businesses,  
536 commerce or sales, or renting or dealing in property, or  
537 reacquired property; also from annuities, interest, rents,  
538 dividends, securities, insurance premiums, reinsurance premiums,  
539 considerations for supplemental insurance contracts, or the  
540 transaction of any business carried on for gain or profit, or  
541 gains, or profits, and income derived from any source whatever and  
542 in whatever form paid. The amount of all such items of income  
543 shall be included in the gross income for the taxable year in  
544 which received by the taxpayer. The amount by which an eligible  
545 employee's salary is reduced pursuant to a salary reduction  
546 agreement authorized under Section 25-17-5 shall be excluded from  
547 the term "gross income" within the meaning of this article.

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

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

555 (b) Casual sales of property. \* \* \*

556                   (i) Prior to January 1, 2001, federal rules,  
557 regulations and revenue procedures shall be followed with respect  
558 to installment sales except they shall be applied and administered  
559 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the  
560 106th Congress had not been enacted. This provision will  
561 generally affect taxpayers, reporting on the accrual method of  
562 accounting, entering into installment note agreements on or after  
563 December 17, 1999. Any gain or profit resulting from the casual  
564 sale of property will be recognized in the year of sale.

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

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

587                   (d) Affiliated companies or persons. As regards sales,  
588 exchanges or payments for services from one to another of

589 affiliated companies or persons or under other circumstances where  
590 the relation between the buyer and seller is such that gross  
591 proceeds from the sale or the value of the exchange or the payment  
592 for services are not indicative of the true value of the subject  
593 matter of the sale, exchange or payment for services, the  
594 commissioner shall prescribe uniform and equitable rules for  
595 determining the true value of the gross income, gross sales,  
596 exchanges or payment for services, or require consolidated returns  
597 of affiliates.

598           (e) Alimony and separate maintenance payments. The  
599 federal rules, regulations and revenue procedures in determining  
600 the deductibility and taxability of alimony payments shall be  
601 followed in this state.

602           (f) Reimbursement for expenses of moving. There shall  
603 be included in gross income (as compensation for services) any  
604 amount received or accrued, directly or indirectly, by an  
605 individual as a payment for or reimbursement of expenses of moving  
606 from one residence to another residence which is attributable to  
607 employment or self-employment.

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

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

613           (a) The proceeds of life insurance policies and  
614 contracts paid upon the death of the insured. However, the income  
615 from the proceeds of such policies or contracts shall be included  
616 in the gross income.

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

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

624           (d) Interest upon the obligations of the United States  
625 or its possessions, or securities issued under the provisions of  
626 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the  
627 War Finance Corporation, or obligations of the State of  
628 Mississippi or political subdivisions thereof.

629           (e) The amounts received through accident or health  
630 insurance as compensation for personal injuries or sickness, plus  
631 the amount of any damages received for such injuries or such  
632 sickness or injuries, or through the War Risk Insurance Act, or  
633 any law for the benefit or relief of injured or disabled members  
634 of the military or naval forces of the United States.

635           (f) Income received by any religious denomination or by  
636 any institution or trust for moral or mental improvements,  
637 religious, Bible, tract, charitable, benevolent, fraternal,  
638 missionary, hospital, infirmary, educational, scientific,  
639 literary, library, patriotic, historical or cemetery purposes or  
640 for two (2) or more of such purposes, if such income be used  
641 exclusively for carrying out one or more of such purposes.

642           (g) Income received by a domestic corporation which is  
643 "taxable in another state" as this term is defined in this  
644 article, derived from business activity conducted outside this  
645 state. Domestic corporations taxable both within and without the  
646 state shall determine Mississippi income on the same basis as  
647 provided for foreign corporations under the provisions of this  
648 article.

649           (h) In case of insurance companies, there shall be  
650 excluded from gross income such portion of actual premiums  
651 received from an individual policyholder as is paid back or  
652 credited to or treated as an abatement of premiums of such  
653 policyholder within the taxable year.

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

658           (j) Amounts paid by the United States to a person as  
659 added compensation for hazardous duty pay as a member of the Armed  
660 Forces of the United States in a combat zone designated by  
661 Executive Order of the President of the United States.

662           (k) Amounts received as retirement allowances,  
663 pensions, annuities or optional retirement allowances paid under  
664 the federal Social Security Act, the Railroad Retirement Act, the  
665 Federal Civil Service Retirement Act, or any other retirement  
666 system of the United States government, retirement allowances paid  
667 under the Mississippi Public Employees' Retirement System,  
668 Mississippi Highway Safety Patrol Retirement System or any other  
669 retirement system of the State of Mississippi or any political  
670 subdivision thereof. The exemption allowed under this paragraph  
671 (k) shall be available to the spouse or other beneficiary at the  
672 death of the primary retiree.

673           (l) Amounts received as retirement allowances,  
674 pensions, annuities or optional retirement allowances paid by any  
675 public or governmental retirement system not designated in  
676 subsection (k) or any private retirement system or plan of which  
677 the recipient was a member at any time during the period of his  
678 employment. Amounts received as a distribution under a Roth  
679 individual retirement account shall be treated in the same manner  
680 as provided under the Internal Revenue Code of 1986, as amended.  
681 The exemption allowed under this paragraph (l) shall be available  
682 to the spouse or other beneficiary at the death of the primary  
683 retiree.

684           (m) Compensation not to exceed the aggregate sum of  
685 Five Thousand Dollars (\$5,000.00) for any taxable year received by  
686 a member of the National Guard or Reserve Forces of the United

687 States as payment for inactive duty training, active duty training  
688 and state active duty.

689 (n) Compensation received for active service as a  
690 member below the grade of commissioned officer and so much of the  
691 compensation as does not exceed the aggregate sum of Five Hundred  
692 Dollars (\$500.00) per month received for active service as a  
693 commissioned officer in the Armed Forces of the United States for  
694 any month during any part of which such members of the Armed  
695 Forces (i) served in a combat zone as designated by Executive  
696 Order of the President of the United States; or (ii) was  
697 hospitalized as a result of wounds, disease or injury incurred  
698 while serving in such combat zone.

699 (o) The proceeds received from federal and state  
700 forestry incentives programs.

701 (p) The amount representing the difference between the  
702 increase of gross income derived from sales for export outside the  
703 United States as compared to the preceding tax year wherein gross  
704 income from export sales was highest, and the net increase in  
705 expenses attributable to such increased exports. In the absence  
706 of direct accounting the ratio of net profits to total sales may  
707 be applied to the increase in export sales. This paragraph (p)  
708 shall only apply to businesses located in this state engaging in  
709 the international export of Mississippi goods and services. Such  
710 goods or services shall have at least fifty percent (50%) of value  
711 added at a location in Mississippi.

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

715 (r) The amount deposited in a medical savings account,  
716 and any interest accrued thereon, that is a part of a medical  
717 savings account program as specified in the Medical Savings  
718 Account Act under Sections 71-9-1 through 71-9-9; provided,  
719 however, that any amount withdrawn from such account for purposes

720 other than paying eligible medical expense or to procure health  
721 coverage, shall be included in gross income.

722 (s) Amounts paid by the Mississippi Soil and Water  
723 Conservation Commission from the Mississippi Soil and Water  
724 Cost-Share Program for the installation of water quality best  
725 management practices.

726 (t) Dividends received by a holding corporation, as  
727 defined in Section 27-13-1, from a subsidiary corporation, as  
728 defined in Section 27-13-1.

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

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

738 (w) Income resulting from transactions with a related  
739 member where the related member subject to tax under this chapter  
740 was required to, and did in fact, add back the expense of such  
741 transactions as required by Section 27-7-17(2). Under no  
742 circumstances may the exclusion from income exceed the deduction  
743 add back of the related member, nor shall the exclusion apply to  
744 any income otherwise excluded under this chapter.

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

746 (a) Members of the Armed Forces. Gross income does not  
747 include compensation received for active service as a member of  
748 the Armed Forces of the United States for any month during any  
749 part of which such member is in a missing status, as defined in  
750 paragraph (d) of this subsection, during the Vietnam Conflict as a  
751 result of such conflict.

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

756           (c) Period of conflict. For the purpose of this  
757 subsection, the Vietnam Conflict began February 28, 1961, and ends  
758 on the date designated by the President by Executive Order as the  
759 date of the termination of combatant activities in Vietnam. For  
760 the purpose of this subsection, an individual is in a missing  
761 status as a result of the Vietnam Conflict if immediately before  
762 such status began he was performing service in Vietnam or was  
763 performing service in Southeast Asia in direct support of military  
764 operations in Vietnam. "Southeast Asia" as used in this paragraph  
765 is defined to include Cambodia, Laos, Thailand and waters adjacent  
766 thereto.

767           (d) "Missing status" means the status of an employee or  
768 member of the Armed Forces who is in active service and is  
769 officially carried or determined to be absent in a status of (i)  
770 missing; (ii) missing in action; (iii) interned in a foreign  
771 country; (iv) captured, beleaguered or besieged by a hostile  
772 force; or (v) detained in a foreign country against his will; but  
773 does not include the status of an employee or member of the Armed  
774 Forces for a period during which he is officially determined to be  
775 absent from his post of duty without authority.

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

779           (f) "Employee" means one who is a citizen or national  
780 of the United States or an alien admitted to the United States for  
781 permanent residence and is a resident of the State of Mississippi  
782 and is employed in or under a federal executive agency or  
783 department of the Armed Forces.



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

788           (h) If refund or credit of any overpayment of tax for  
789 any taxable year resulting from the application of subsection (5)  
790 of this section is prevented by the operation of any law or rule  
791 of law, such refund or credit of such overpayment of tax may,  
792 nevertheless, be made or allowed if claim therefor is filed with  
793 the State Tax Commission within three (3) years after the date of  
794 the enactment of this subsection.

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

797           (6) A shareholder of an S corporation, as defined in Section  
798 27-8-3(1)(g), shall take into account the income, loss, deduction  
799 or credit of the S corporation only to the extent provided in  
800 Section 27-8-7(2).

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

803           27-7-17. In computing taxable income, there shall be allowed  
804 as deductions:

805           (1) **Business deductions.**

806           (a) Business expenses. All the ordinary and necessary  
807 expenses paid or incurred during the taxable year in carrying on  
808 any trade or business, including a reasonable allowance for  
809 salaries or other compensation for personal services actually  
810 rendered; nonreimbursable traveling expenses incident to current  
811 employment, including a reasonable amount expended for meals and  
812 lodging while away from home in the pursuit of a trade or  
813 business; and rentals or other payments required to be made as a  
814 condition of the continued use or possession, for purposes of the  
815 trade or business of property to which the taxpayer has not taken  
816 or is not taking title or in which he had no equity. Expense

817 incurred in connection with earning and distributing nontaxable  
818 income is not an allowable deduction. Limitations on  
819 entertainment expenses shall conform to the provisions of the  
820 Internal Revenue Code of 1986.

821 (b) Interest. All interest paid or accrued during the  
822 taxable year on business indebtedness, except interest upon the  
823 indebtedness for the purchase of tax-free bonds, or any stocks,  
824 the dividends from which are nontaxable under the provisions of  
825 this article; provided, however, in the case of securities  
826 dealers, interest payments or accruals on loans, the proceeds of  
827 which are used to purchase tax-exempt securities, shall be  
828 deductible if income from otherwise tax-free securities is  
829 reported as income. Investment interest expense shall be limited  
830 to investment income. Interest expense incurred for the purchase  
831 of treasury stock, to pay dividends, or incurred as a result of an  
832 undercapitalized affiliated corporation may not be deducted unless  
833 an ordinary and necessary business purpose can be established to  
834 the satisfaction of the commissioner. For the purposes of this  
835 paragraph, the phrase "interest upon the indebtedness for the  
836 purchase of tax-free bonds" applies only to the indebtedness  
837 incurred for the purpose of directly purchasing tax-free bonds and  
838 does not apply to any other indebtedness incurred in the regular  
839 course of the taxpayer's business. Any corporation, association,  
840 organization or other entity taxable under Section 27-7-23(c)  
841 shall allocate interest expense as provided in Section  
842 27-7-23(c)(3)(I).

843 (c) Taxes. Taxes paid or accrued within the taxable  
844 year, except state and federal income taxes, excise taxes based on  
845 or measured by net income, estate and inheritance taxes, gift  
846 taxes, cigar and cigarette taxes, gasoline taxes, and sales and  
847 use taxes unless incurred as an item of expense in a trade or  
848 business or in the production of taxable income. In the case of  
849 an individual, taxes permitted as an itemized deduction under the

850 provisions of subsection (3)(a) of this section are to be claimed  
851 thereunder.

852 (d) Business losses.

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

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

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

865 (f) Depreciation. A reasonable allowance for  
866 exhaustion, wear and tear of property used in the trade or  
867 business, or rental property, and depreciation upon buildings  
868 based upon their reasonable value as of March 16, 1912, if  
869 acquired prior thereto, and upon cost if acquired subsequent to  
870 that date.

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

878 (h) Contributions or gifts. Except as otherwise  
879 provided in subsection (3)(a) of this section for individuals,  
880 contributions or gifts made by corporations within the taxable  
881 year to corporations, organizations, associations or institutions,  
882 including Community Chest funds, foundations and trusts created

883 solely and exclusively for religious, charitable, scientific or  
884 educational purposes, or for the prevention of cruelty to children  
885 or animals, no part of the net earnings of which inure to the  
886 benefit of any private stockholder or individual. This deduction  
887 shall be allowed in an amount not to exceed twenty percent (20%)  
888 of the net income. Such contributions or gifts shall be allowable  
889 as deductions only if verified under rules and regulations  
890 prescribed by the commissioner, with the approval of the Governor.  
891 Contributions made in any form other than cash shall be allowed as  
892 a deduction, subject to the limitations herein provided, in an  
893 amount equal to the actual market value of the contributions at  
894 the time the contribution is actually made and consummated.

895 (i) Reserve funds - insurance companies. In the case  
896 of insurance companies the net additions required by law to be  
897 made within the taxable year to reserve funds when such reserve  
898 funds are maintained for the purpose of liquidating policies at  
899 maturity.

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

903 (k) Contributions to employee pension plans.  
904 Contributions made by an employer to a plan or a trust forming  
905 part of a pension plan, stock bonus plan, disability or  
906 death-benefit plan, or profit-sharing plan of such employer for  
907 the exclusive benefit of some or all of his, their, or its  
908 employees, or their beneficiaries, shall be deductible from his,  
909 their, or its income only to the extent that, and for the taxable  
910 year in which, the contribution is deductible for federal income  
911 tax purposes under the Internal Revenue Code of 1986 and any other  
912 provisions of similar purport in the Internal Revenue Laws of the  
913 United States, and the rules, regulations, rulings and  
914 determinations promulgated thereunder, provided that:

915 (i) The plan or trust be irrevocable.

916                   (ii) The plan or trust constitute a part of a  
917 pension plan, stock bonus plan, disability or death-benefit plan,  
918 or profit-sharing plan for the exclusive benefit of some or all of  
919 the employer's employees and/or officers, or their beneficiaries,  
920 for the purpose of distributing the corpus and income of the plan  
921 or trust to such employees and/or officers, or their  
922 beneficiaries.

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

926           Contributions to all plans or to all trusts of real or  
927 personal property (or real and personal property combined) or to  
928 insured plans created under a retirement plan for which provision  
929 has been made under the laws of the United States of America,  
930 making such contributions deductible from income for federal  
931 income tax purposes, shall be deductible only to the same extent  
932 under the Income Tax Laws of the State of Mississippi.

933           (1) Net operating loss carrybacks and carryovers. A  
934 net operating loss for any taxable year ending after December 31,  
935 1993, and taxable years thereafter, shall be a net operating loss  
936 carryback to each of the three (3) taxable years preceding the  
937 taxable year of the loss. If the net operating loss for any  
938 taxable year is not exhausted by carrybacks to the three (3)  
939 taxable years preceding the taxable year of the loss, then there  
940 shall be a net operating loss carryover to each of the fifteen  
941 (15) taxable years following the taxable year of the loss  
942 beginning with any taxable year after December 31, 1991.

943           For any taxable year ending after December 31, 1997, the  
944 period for net operating loss carrybacks and net operating loss  
945 carryovers shall be the same as those established by the Internal  
946 Revenue Code and the rules, regulations, rulings and  
947 determinations promulgated thereunder.

948           The term "net operating loss," for the purposes of this  
949 paragraph, shall be the excess of the deductions allowed over the  
950 gross income; provided, however, the following deductions shall  
951 not be allowed in computing same:

952                   (i) No net operating loss deduction shall be  
953 allowed.

954                   (ii) No personal exemption deduction shall be  
955 allowed.

956                   (iii) Allowable deductions which are not  
957 attributable to taxpayer's trade or business shall be allowed only  
958 to the extent of the amount of gross income not derived from such  
959 trade or business.

960           Any taxpayer entitled to a carryback period as provided by  
961 this paragraph may elect to relinquish the entire carryback period  
962 with respect to a net operating loss for any taxable year ending  
963 after December 31, 1991. The election shall be made in the manner  
964 prescribed by the State Tax Commission and shall be made by the  
965 due date, including extensions of time, for filing the taxpayer's  
966 return for the taxable year of the net operating loss for which  
967 the election is to be in effect. The election, once made for any  
968 taxable year, shall be irrevocable for that taxable year.

969                   (m) Amortization of pollution or environmental control  
970 facilities. Allowance of deduction. Every taxpayer, at his  
971 election, shall be entitled to a deduction for pollution or  
972 environmental control facilities to the same extent as that  
973 allowed under the Internal Revenue Code and the rules,  
974 regulations, rulings and determinations promulgated thereunder.

975                   (n) Dividend distributions - real estate investment  
976 trusts. "Real estate investment trust" (hereinafter referred to  
977 as REIT) shall have the meaning ascribed to such term in Section  
978 856 of the federal Internal Revenue Code of 1986, as amended. A  
979 REIT is allowed a dividend distributed deduction if the dividend  
980 distributions meet the requirements of Section 857 or are

981 otherwise deductible under Section 858 or 860, federal Internal  
982 Revenue Code of 1986, as amended. In addition:

983 (i) A dividend distributed deduction shall only be  
984 allowed for dividends paid by a publicly traded REIT. A qualified  
985 REIT subsidiary shall be allowed a dividend distributed deduction  
986 if its owner is a publicly traded REIT.

987 (ii) Income generated from real estate contributed  
988 or sold to a REIT by a shareholder or related party shall not give  
989 rise to a dividend distributed deduction, unless the shareholder  
990 or related party would have received the dividend distributed  
991 deduction under this chapter.

992 (iii) A holding corporation receiving a dividend  
993 from a REIT shall not be allowed the deduction in Section  
994 27-7-15(4)(t).

995 (iv) Any REIT not allowed the dividend distributed  
996 deduction in the federal Internal Revenue Code of 1986, as  
997 amended, shall not be allowed a dividend distributed deduction  
998 under this chapter.

999 The commissioner is authorized to promulgate rules and  
1000 regulations consistent with the provisions in Section 269 of the  
1001 federal Internal Revenue Code of 1986, as amended, so as to  
1002 prevent the evasion or avoidance of state income tax.

1003 (o) Contributions to college savings trust fund  
1004 accounts. Contributions or payments to a Mississippi Affordable  
1005 College Savings Program account are deductible as provided under  
1006 Section 37-155-113. Payments made under a prepaid tuition  
1007 contract entered into under the Mississippi Prepaid Affordable  
1008 College Tuition Program are deductible as provided under Section  
1009 37-155-17.

1010 (2) **Restrictions on the deductibility of certain intangible**  
1011 **expenses and interest expenses with a related member.**

1012 (a) As used in this subsection (2):

1013 (i) "Intangible expenses and costs" include:

1014 1. Expenses, losses and costs for, related  
1015 to, or in connection directly or indirectly with the direct or  
1016 indirect acquisition, use, maintenance or management, ownership,  
1017 sale, exchange or any other disposition of intangible property to  
1018 the extent such amounts are allowed as deductions or costs in  
1019 determining taxable income under this chapter;

1020 2. Expenses or losses related to or incurred  
1021 in connection directly or indirectly with factoring transactions  
1022 or discounting transactions;

1023 3. Royalty, patent, technical and copyright  
1024 fees;

1025 4. Licensing fees; and

1026 5. Other similar expenses and costs.

1027 (ii) "Intangible property" means patents, patent  
1028 applications, trade names, trademarks, service marks, copyrights  
1029 and similar types of intangible assets.

1030 (iii) "Interest expenses and cost" means amounts  
1031 directly or indirectly allowed as deductions for purposes of  
1032 determining taxable income under this chapter to the extent such  
1033 interest expenses and costs are directly or indirectly for,  
1034 related to, or in connection with the direct or indirect  
1035 acquisition maintenance, management, ownership, sale, exchange or  
1036 disposition of intangible property.

1037 (iv) "Related member" means an entity or person  
1038 that, with respect to the taxpayer during all or any portion of  
1039 the taxable year, is a related entity, a component member as  
1040 defined in the Internal Revenue Code, or is an entity or a person  
1041 to or from whom there is attribution of stock ownership in  
1042 accordance with Section 1563(e) of the Internal Revenue Code.

1043 (vi) "Related entity" means:

1044 1. A stockholder who is an individual or a  
1045 member of the stockholder's family, as defined in regulations  
1046 prescribed by the commissioner, if the stockholder and the members



1047 of the stockholder's family own, directly, indirectly,  
1048 beneficially or constructively, in the aggregate, at least fifty  
1049 percent (50%) of the value of the taxpayer's outstanding stock;

1050 2. A stockholder, or a stockholder's  
1051 partnership, limited liability company, estate, trust or  
1052 corporation, if the stockholder and the stockholder's  
1053 partnerships, limited liability companies, estates, trusts and  
1054 corporations own, directly, indirectly, beneficially or  
1055 constructively, in the aggregate, at least fifty percent (50%) of  
1056 the value of the taxpayer's outstanding stock;

1057 3. A corporation, or a party related to the  
1058 corporation in a manner that would require an attribution of stock  
1059 from the corporation to the party or from the party to the  
1060 corporation, if the taxpayer owns, directly, indirectly,  
1061 beneficially or constructively, at least fifty percent (50%) of  
1062 the value of the corporation's outstanding stock under regulation  
1063 prescribed by the commissioner;

1064 4. Any entity or person which would be a  
1065 related member under this section if the taxpayer were considered  
1066 a corporation for purposes of this section.

1067 (b) In computing net income, a taxpayer shall add back  
1068 otherwise deductible interest expenses and costs and intangible  
1069 expenses and costs directly or indirectly paid, accrued to or  
1070 incurred, in connection directly or indirectly with one or more  
1071 direct or indirect transactions with one or more related members.

1072 (c) The adjustments required by this subsection shall  
1073 not apply to such portion of interest expenses and costs and  
1074 intangible expenses and costs that the taxpayer can establish by  
1075 the preponderance of the evidence meets both of the following:

1076 (i) The related member directly or indirectly  
1077 paid, accrued or incurred such portion to a person during the same  
1078 income year who is not a related member; and

1079                   (ii) The transaction giving rise to the interest  
1080 expenses and costs or the intangible expenses and costs between  
1081 the taxpayer and the related member did not have the effect of  
1082 avoiding any portion of the tax due under this chapter.

1083                   (d) Nothing in this subsection shall require a taxpayer  
1084 to add to its net income more than once any amount of interest  
1085 expenses and costs or intangible expenses and costs that the  
1086 taxpayer pays, accrues or incurs to a related member.

1087                   (e) The commissioner may prescribe such regulations as  
1088 necessary or appropriate to carry out the purposes of this  
1089 subsection, including, but not limited to, clarifying definitions  
1090 of terms, rules of stock attribution, factoring and discount  
1091 transactions.

1092           (3) Individual nonbusiness deductions.

1093                   (a) The amount allowable for individual nonbusiness  
1094 itemized deductions for federal income tax purposes, except the  
1095 deduction for state income taxes paid, where the individual is  
1096 eligible to elect, for the taxable year, to itemize deductions on  
1097 his federal return; or

1098                   (b) In lieu of the individual nonbusiness itemized  
1099 deductions authorized in paragraph (a), for all purposes other  
1100 than ordinary and necessary expenses paid or incurred during the  
1101 taxable year in carrying on any trade or business, an optional  
1102 standard deduction of:

1103                   (i) Three Thousand Four Hundred Dollars  
1104 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred  
1105 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand  
1106 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter  
1107 in the case of married individuals filing a joint or combined  
1108 return;

1109                   (ii) One Thousand Seven Hundred Dollars  
1110 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred  
1111 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand

1112 Three Hundred Dollars (\$2,300.00) for each calendar year  
1113 thereafter in the case of married individuals filing separate  
1114 returns;

1115 (iii) Three Thousand Four Hundred Dollars  
1116 (\$3,400.00) in the case of a head of family; or

1117 (iv) Two Thousand Three Hundred Dollars  
1118 (\$2,300.00) in the case of an individual who is not married.

1119 In the case of a husband and wife living together, having  
1120 separate incomes, and filing combined returns, the standard  
1121 deduction authorized may be divided in any manner they choose. In  
1122 the case of separate returns by a husband and wife, the standard  
1123 deduction shall not be allowed to either if the taxable income of  
1124 one of the spouses is determined without regard to the standard  
1125 deduction.

1126 (c) A nonresident individual shall be allowed the same  
1127 individual nonbusiness deductions as are authorized for resident  
1128 individuals in paragraph (a) or (b) of this subsection; however,  
1129 the nonresident individual is entitled only to that proportion of  
1130 the individual nonbusiness deductions as his net income from  
1131 sources within the State of Mississippi bears to his total or  
1132 entire net income from all sources.

1133 (3) Nothing in this section shall permit the same item to be  
1134 deducted more than once, either in fact or in effect.

1135 SECTION 4. Section 27-7-23, Mississippi Code of 1972, is  
1136 amended as follows:

1137 27-7-23. (a) **Definitions.**

1138 (1) "Doing business" means the operation of any  
1139 business enterprise or activity in Mississippi for financial  
1140 profit or economic gain, including, but not limited to, the  
1141 following:

1142 (A) The regular maintenance of an office or other  
1143 place of business in Mississippi; or

1144 (B) The regular maintenance in Mississippi of an  
1145 inventory of merchandise or material for sale, distribution or  
1146 manufacture, regardless of whether kept on the premises of the  
1147 taxpayer or otherwise; or

1148 (C) The selling or distributing of merchandise to  
1149 customers in Mississippi directly from a company-owned or operated  
1150 vehicle when title to the merchandise is transferred from the  
1151 seller or distributor to the customer at the time of the sale or  
1152 distribution (transient selling); or

1153 (D) The regular rendering of service to clients or  
1154 customers in Mississippi in person or by agents or employees; or

1155 (E) The owning, renting or operating of business  
1156 or income-producing property, real or personal, in Mississippi; or

1157 (F) The performing of contracts, prime or sublet  
1158 work, for the construction, repair or renovation of real or  
1159 personal property.

1160 (2) "Business income" means income of any type or  
1161 class, and from any activity that meets the relationship described  
1162 in the transactional test or the functional test described in this  
1163 paragraph (2). The classification of income by occasionally used  
1164 labels, including, but not limited to, manufacturing income,  
1165 compensation for services, sales income interest, dividends,  
1166 rents, royalties, gains, operating income, and nonoperating income  
1167 shall not be considered when determining whether income is  
1168 business or nonbusiness income. All income of the taxpayer is  
1169 business income unless clearly classifiable as nonbusiness income.  
1170 A taxpayer seeking to overcome a classification of income as  
1171 business income must establish by clear and convincing evidence  
1172 that the income has been incorrectly classified.

1173 (A) Transactional test. Business income includes  
1174 income arising from transactions and activity in the regular  
1175 course of the taxpayer's trade or business.

1176 (i) If the transaction or activity is in the  
1177 regular course of the taxpayer's trade or business, part of which  
1178 trade or business is conducted within Mississippi, the resulting  
1179 income of the transaction or activity is business income for  
1180 Mississippi. Income may be business income even though the actual  
1181 transaction or activity that gives rise to the income does not  
1182 occur in Mississippi.

1183 (ii) For a transaction or activity to be in  
1184 the regular course of the taxpayer's trade or business, the  
1185 transactions or activity need not be one that frequently occurs in  
1186 the trade or business, although most frequently occurring  
1187 transactions or activities shall be considered to be in the  
1188 regular course of a trade or business. It is sufficient to  
1189 classify a transaction or activity as being in the regular course  
1190 of a trade or business if it is reasonable to conclude  
1191 transactions of that type are customary in the kind of trade or  
1192 business being conducted or are within the scope of what the trade  
1193 or business does.

1194 (B) Functional test. Business income includes  
1195 income from tangible and intangible property if the acquisition,  
1196 management and/or disposition of the property constitute integral  
1197 parts of the taxpayer's regular trade or business operation.

1198 (i) Under the functional test, business  
1199 income need not be derived from transactions or activities that  
1200 are in the regular course of the taxpayer's own particular trade  
1201 or business. It shall be sufficient if the property from which  
1202 the income is derived is or was an integral, functional, necessary  
1203 or operative component of the taxpayer's trade or business  
1204 operations, part of which trade or business is or was conducted  
1205 within this state.

1206 (ii) Income that is derived from isolated  
1207 sales, leases, assignments, licenses and other infrequently  
1208 occurring dispositions, transfers or transactions involving

1209 property, including transactions made in liquidation or the  
1210 winding up of business is business income if the property is or  
1211 was used in the taxpayer's trade or business operation. Income  
1212 from the licensing of intangible assets, such as patents,  
1213 copyrights, trademarks, service marks, goodwill, know-how, trade  
1214 secrets and similar assets, that were developed or acquired for  
1215 use by the taxpayer in his trade or business operations,  
1216 constitute business income whether the licensing itself  
1217 constituted the operation of a trade or business and whether the  
1218 taxpayer remains in the same trade or business from or for which  
1219 the intangible asset was developed or acquired.

1220 (iii) Under the functional test, income from  
1221 intangible property is business income when the intangible  
1222 property serves an operating function, as opposed to solely an  
1223 investment function. The relevant inquiry shall focus on whether  
1224 the property is or was held in furtherance of the taxpayer's trade  
1225 or business, that is, on the objective characteristics of the  
1226 intangible property's use or acquisition and its relation to the  
1227 taxpayer and the taxpayer's activities. The functional test is  
1228 not satisfied where the holding of the property is limited solely  
1229 to an investment function as in the case where the holding of the  
1230 property is limited to mere financial betterment of the taxpayer  
1231 in general.

1232 (iv) If the property is or was held in  
1233 furtherance of the taxpayer's trade or business beyond mere  
1234 financial betterment, then income from the property may be  
1235 business income even though the actual transaction or activity  
1236 involving the property that gives rise to the income does not  
1237 occur in Mississippi.

1238 (v) If, with respect to an item of property,  
1239 a taxpayer takes a deduction from business income that is  
1240 apportioned to Mississippi, or includes that item of property in  
1241 the property factor, it is presumed that the item of property is

1242 or was integral to the taxpayer's trade or business operations.

1243 No presumption arises from the absence of any of this action.

1244 (vi) Application of the functional test is  
1245 generally unaffected by the form of the property. Income arising  
1246 from intangible property is business income when the intangible  
1247 property itself or the underlying value of the intangible property  
1248 is or was an integral, functional, necessary or operative  
1249 component to the taxpayer's trade or business operation.

1250 Therefore, while treatment of income derived from transactions  
1251 involving intangible property as business income may be supported  
1252 by a finding that the issuer of the intangible property and the  
1253 taxpayer are engaged in the same trade or business, establishment  
1254 of such a relationship is not the exclusive basis for concluding  
1255 that the income constitutes business income. It is sufficient to  
1256 support a finding of business income if the holding of the  
1257 intangible property served an operational rather than an  
1258 investment function.

1259 (3) "Nonbusiness income" means all income that does not  
1260 meet the definition of business income.

1261 (4) "Commercial domicile" means the principal place  
1262 from which the trade or business of the taxpayer is directed or  
1263 managed.

1264 (5) "State" means any state of the United States, the  
1265 District of Columbia, the Commonwealth of Puerto Rico, any  
1266 territory or possession of the United States, and any foreign  
1267 country or political subdivision thereof.

1268 (b) **Nonresident individuals, partnerships, trusts and**  
1269 **estates.**

1270 (1) The tax imposed by this article shall apply to the  
1271 entire net income of a taxable nonresident derived from  
1272 employment, trade, business, professional, personal service or  
1273 other activity for financial gain or profit, performed or carried  
1274 on within Mississippi, including the rental of real or personal

1275 property located within this state or for use herein and including  
1276 the sale or exchange or other disposition of tangible or  
1277 intangible property having a situs in Mississippi.

1278 (2) Income derived from trade, business or other  
1279 commercial activity shall be taxed to the extent that it is  
1280 derived from such activity within this state. Mississippi net  
1281 income shall be determined \* \* \* in the \* \* \* manner \* \* \*  
1282 prescribed by the commissioner for the allocation and/or  
1283 apportionment of income of foreign corporations having income from  
1284 sources both within and without the state.

1285 (3) A taxable nonresident shall be allowed to deduct  
1286 expenses, interest, taxes, losses, bad debts, depreciation and  
1287 similar business expenses only to the extent that they are  
1288 allowable under this article and are attributable to the  
1289 production of income allocable to and taxable by the State of  
1290 Mississippi. As to allowable deductions essentially personal in  
1291 nature, such as contributions to charitable organizations, medical  
1292 expenses, taxes, interest and the optional standard deduction,  
1293 such taxable nonresident shall be allowed deductions therefor in  
1294 the ratio that the net income from sources within Mississippi  
1295 bears to the total net income from all sources of such taxable  
1296 nonresident, computed as if such taxable nonresident were a  
1297 resident of Mississippi.

1298 (c) **Foreign corporations, associations, organizations and**  
1299 **other entities.**

1300 (1) Corporations and organizations required to file.  
1301 All foreign corporations and other organizations which have  
1302 obtained a certificate of authority from the Secretary of State to  
1303 do business in Mississippi, or corporations or organizations which  
1304 are in fact doing business in Mississippi, are subject to the  
1305 income tax levy and are required to file annual income tax returns  
1306 unless the corporation or organization is specifically exempt from  
1307 tax by this article.



1308           (2) Allocation and apportionment of income. Except as  
1309 provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and  
1310 27-7-24.7, Mississippi Code of 1972, any corporation or  
1311 organization having business income from business activity which  
1312 is taxable both within and without this state shall allocate and  
1313 apportion its net business income as prescribed by the  
1314 commissioner. If the business income of the corporation is  
1315 derived solely from property owned or business done in this state  
1316 and the corporation is not taxable in another state, the entire  
1317 business income shall be allocated to this state. \* \* \* A  
1318 corporation is taxable in another state if, \* \* \* in that state  
1319 the corporation is subject to a net income tax, or a franchise tax  
1320 measured by net income, or \* \* \* if that state has jurisdiction to  
1321 subject the corporation to a net income tax regardless of  
1322 whether \* \* \* the state does or does not subject the corporation  
1323 to a net income tax.

1324       \* \* \*

1325           (3) Nonbusiness income. Rents and royalties from real  
1326 or tangible personal property, capital gains, interest, dividends,  
1327 or patent or copyright royalties, to the extent that they  
1328 constitute nonbusiness income, shall be allocated as follows:

1329                   (A) Net rents and royalties from real property are  
1330 allocable to the state in which the property is located.

1331                   (B) Net rents and royalties from tangible personal  
1332 property are allocable to the state in which the property is used,  
1333 or to this state in their entirety if the corporation's commercial  
1334 domicile is in this state and the corporation is not organized  
1335 under the laws of or taxable in the state in which the property is  
1336 utilized.

1337                   (C) Capital gains and losses from sales of real  
1338 property are allocable to the state in which the property is  
1339 located.

1340 (D) Capital gains and losses from sales of  
1341 tangible personal property are allocable to the state in which the  
1342 property is located, or to this state if the corporation's  
1343 commercial domicile is in this state and the corporation is not  
1344 taxable in the state in which the property had a situs.

1345 (E) Capital gains and losses from sales of  
1346 intangible personal property are allocable to the state of the  
1347 corporation's commercial domicile.

1348 (F) Interest and dividends are allocable to the  
1349 state of the corporation's commercial domicile.

1350 (G) Patent and copyright royalties are allocable  
1351 to the state in which the patent or copyright is utilized by the  
1352 payer, or to this state if and to the extent that the patent or  
1353 copyright is utilized by the payer in a state in which the  
1354 corporation is not taxable and the corporation's commercial  
1355 domicile is in this state.

1356 (H) Any other nonbusiness income shall be  
1357 allocated as prescribed by the commissioner.

1358 (I) All expenses connected with earning  
1359 nonbusiness income, such as interest, taxes, general and  
1360 administrative expenses and such other expenses relating to the  
1361 production of nonbusiness income, shall be deducted from gross  
1362 nonbusiness income. Nonbusiness interest expense shall be  
1363 computed by using the ratio of nonbusiness assets to total assets  
1364 applied to total interest expense.

1365 (d) **Foreign lenders.**

1366 (1) In the case of any foreign lender, (corporation,  
1367 association, organization, individual, partnership, trusts or  
1368 estates), other than: (A) a foreign insurance company subject to  
1369 certification by the Commissioner of Insurance, as provided by  
1370 Section 83-21-1 et seq.; or (B) a foreign lender qualified under  
1371 the general laws of this state to do business herein; or (C) a  
1372 foreign lender which maintains an office or place of business

1373 within this state; or (D) lenders that sold properties in this  
1374 state and financed such sale and reported on the installment  
1375 method, interest income received or accrued on or after January 1,  
1376 1977, from loans secured by real estate or from lending on the  
1377 security of real estate located within this state shall be  
1378 excluded from Mississippi gross income and exempt from the  
1379 Mississippi income tax levy and the reporting requirements.

1380           (2) In the case of any foreign lender exempted in  
1381 paragraph (1) of this subsection, interest income received on any  
1382 loan finalized or consummated after January 1, 1977, shall be  
1383 excluded from Mississippi gross income and the net profits derived  
1384 therefrom shall be exempt from the Mississippi income tax levy for  
1385 the life of such loan.

1386           (e) **Insurance companies.** Insurance companies, other than  
1387 life insurance companies, deriving premium income from within and  
1388 without the state, may determine their Mississippi net income from  
1389 underwriting by apportioning to this state a part of their total  
1390 net underwriting income by such processes or formulas of general  
1391 apportionment as are prescribed by the commissioner; provided that  
1392 a company adopting this method of reporting for any year must  
1393 adhere to said method of reporting for subsequent years, unless  
1394 permission is granted by the commissioner to change to a different  
1395 method of reporting; and provided that all affiliated companies of  
1396 the same group shall use the same method of reporting.

1397           (f) **Bond requirements.** Any individual or corporation  
1398 subject to the tax imposed by this article, engaged in the  
1399 business of performing contracts which may require the payment of  
1400 net income taxes, may be required by the commissioner, before  
1401 entering into the performance of any contract or contracts the  
1402 consideration of which is more than Ten Thousand Dollars  
1403 (\$10,000.00), to execute and file a good and valid bond with a  
1404 surety company authorized to do business in this state, or with  
1405 sufficient sureties to be approved by the commissioner,

1406 conditioned that all taxes which may accrue to the State of  
1407 Mississippi will be paid when due. Provided, however, that such  
1408 bond shall not exceed five percent (5%) of the total contracts  
1409 entered into during the taxable period, and, provided further,  
1410 that any taxpayer, in lieu of furnishing such bond, may pay the  
1411 maximum sum required herein as advance payment of taxes due on the  
1412 net income realized from any contract or contracts performed or  
1413 completed in this state.

1414 SECTION 5. Section 27-7-24.3, Mississippi Code of 1972, is  
1415 amended as follows:

1416 27-7-24.3. (1) The receipts factor is a fraction, the  
1417 numerator of which is the receipts of the taxpayer in this state  
1418 during the taxable year and the denominator of which is the  
1419 receipts of the taxpayer within and without this state during the  
1420 taxable year. The method of calculating receipts for purposes of  
1421 the denominator is the same as the method used in determining  
1422 receipts for purposes of the numerator. The receipts factor shall  
1423 include only those receipts described herein which constitute  
1424 business income and are included in the computation of the  
1425 apportionable income base for the taxable year.

1426 (2) The numerator of the receipts factor includes receipts  
1427 from the lease or rental of real property owned by the taxpayer if  
1428 the property is located within this state on receipts from the  
1429 sublease of real property if the property is located within this  
1430 state.

1431 (3) (a) Except as described in paragraph (b) of this  
1432 subsection, the numerator of the receipts factor includes receipts  
1433 from the lease or rental of tangible personal property owned by  
1434 the taxpayer if the property is located within this state when it  
1435 is first placed in service by the lessee.

1436 (b) Receipts from the lease or rental of transportation  
1437 property owned by the taxpayer are included in the numerator of  
1438 the receipts factor to the extent that the property is used in

1439 this state. The extent an aircraft will be deemed to be used in  
1440 this state and the amount of the receipts that is to be included  
1441 in the numerator of this state's receipts factor is determined by  
1442 multiplying all the receipts from the lease or rental of the  
1443 aircraft by a fraction, the numerator of which is the number of  
1444 landings of the aircraft in this state and the denominator of  
1445 which is the total number of landings of the aircraft. If the  
1446 extent of the use of any transportation property within the state  
1447 cannot be determined, then the property will be deemed to be used  
1448 wholly in the state in which the property has its principal base  
1449 of operations. A motor vehicle will be deemed to be used wholly  
1450 in the state in which it is registered.

1451 (4) (a) The numerator of the receipts factor includes  
1452 interest and fees or penalties in the nature of interest from  
1453 loans secured by real property if the property is located within  
1454 this state. If the property is located both within this state and  
1455 one or more other states, the receipts described in this  
1456 subsection are included in the numerator of the receipts factor if  
1457 more than fifty percent (50%) of the fair market value of the real  
1458 property is located within this state. If more than fifty percent  
1459 (50%) of the fair market value of the real property is not located  
1460 within any one state, then the receipts described in this  
1461 subsection shall be included in the numerator of the receipts  
1462 factor if the borrower is located in this state.

1463 (b) The determination of whether the real property  
1464 securing a loan is located within this state shall be made as of  
1465 the time the original agreement was made and any and all  
1466 subsequent substitutions of collateral shall be disregarded.

1467 (5) The numerator of the receipts factor includes interest  
1468 and fees or penalties in the nature of interest from loans not  
1469 secured by real property if the borrower is located in this state.

1470 (6) The numerator of the receipts factor includes net gains  
1471 from the sale of loans. Net gains from the sale of loans includes

1472 income recorded under coupon stripping rules of Section 1286 of  
1473 the Internal Revenue Code, as in effect January 1, 1996.

1474 (a) The amount of net gains (but not less than zero)  
1475 from the sale of loans secured by real property included in the  
1476 numerator is determined by multiplying such net gains by a  
1477 fraction the numerator of which is the amount included in the  
1478 numerator of the receipts factor pursuant to subsection (4) of  
1479 this section and the denominator of which is the total amount of  
1480 interest and fees or penalties in the nature of interest from  
1481 loans secured by real property.

1482 (b) The amount of net gains (but not less than zero)  
1483 from the sale of loans not secured by real property included in  
1484 the numerator is determined by multiplying such net gains by a  
1485 fraction the numerator of which is the amount included in the  
1486 numerator of the receipts factor pursuant to subsection (5) of  
1487 this section and the denominator of which is the total amount of  
1488 interest and fees or penalties in the nature of interest from  
1489 loans not secured by real property.

1490 (7) The numerator of the receipts factor includes interest  
1491 and fees or penalties in the nature of interest from credit card  
1492 receivables and receipts from fees charged to card holders, such  
1493 as annual fees, if the billing address of the card holder is in  
1494 this state.

1495 (8) The numerator of the receipts factor includes net gains  
1496 (but not less than zero) from the sale of credit card receivables  
1497 multiplied by a fraction, the numerator of which is the amount  
1498 included in the numerator of the receipts factor pursuant to  
1499 subsection (7) of this section and the denominator of which is the  
1500 taxpayer's total amount of interest and fees or penalties in the  
1501 nature of interest from credit card receivables and fees charged  
1502 to card holders.

1503 (9) The numerator of the receipts factor includes all credit  
1504 card issuer's reimbursement fees multiplied by a fraction, the

1505 numerator of which is the amount included in the numerator of the  
1506 receipts factor pursuant to subsection (7) of this section and the  
1507 denominator of which is the taxpayer's total amount of interest  
1508 and fees or penalties in the nature of interest from credit card  
1509 receivables and fees charged to card holders.

1510 (10) The numerator of the receipts factor includes receipts  
1511 from merchant discount if the commercial domicile of the merchant  
1512 is in this state. Such receipts shall be computed net of any  
1513 cardholder charge backs, but shall not be reduced by any  
1514 interchange transaction fees or by any issuer's reimbursement fees  
1515 paid to another for charges made by its card holders.

1516 (11) (a) (i) The numerator of the receipts factor includes  
1517 loan servicing fees derived from loans secured by real property  
1518 multiplied by a fraction the numerator of which is the amount  
1519 included in the numerator of the receipts factor pursuant to  
1520 subsection (4) of this section and the denominator of which is the  
1521 total amount of interest and fees or penalties in the nature of  
1522 interest from loans secured by real property.

1523 (ii) The numerator of the receipts factor includes  
1524 loan servicing fees derived from loans not secured by real  
1525 property multiplied by a fraction the numerator of which is the  
1526 amount included in the numerator of the receipts factor pursuant  
1527 to subsection (5) of this section and the denominator of which is  
1528 the total amount of interest and fees or penalties in the nature  
1529 of interest and fees or penalties in the nature of interest from  
1530 loans not secured by real property.

1531 (b) In circumstances in which the taxpayer receives  
1532 loan servicing fees for servicing either the secured or the  
1533 unsecured loans of another, the numerator of the receipts factor  
1534 shall include such fees if the borrower is located in this state.

1535 (12) The numerator of the receipts factor includes receipts  
1536 from services not otherwise apportioned under this section if the  
1537 service is performed in this state. If the service is performed

1538 both within and without this state, the numerator of the receipts  
1539 factor includes receipts from services not otherwise apportioned  
1540 under this section, if a greater proportion of the income  
1541 producing activity is performed in this state based on cost of  
1542 performance.

1543       (13) (a) Interest, dividends, net gains (but not less than  
1544 zero) and other income from investment assets and activities and  
1545 from trading assets and activities shall be included in the  
1546 receipts factor. Investment assets and activities and trading  
1547 assets and activities include but are not limited to: investment  
1548 securities; trading account assets; federal funds; securities  
1549 purchased and sold under agreements to resell or repurchase;  
1550 options; future contracts; forward contracts; notional principal  
1551 contracts such as swaps; equities; and foreign currency  
1552 transactions. With respect to the investment and trading assets  
1553 and activities described in subparagraphs (i) and (ii) of this  
1554 paragraph (a), the receipts factor shall include the amounts  
1555 described in such subparagraphs.

1556               (i) The receipts factor shall include the amount  
1557 by which interest from federal funds sold and securities purchased  
1558 under resale agreements exceeds interest expenses on federal funds  
1559 purchased and securities sold under repurchase agreements.

1560               (ii) The receipts factor shall include the amount  
1561 by which interest, dividends, gains and other income from trading  
1562 assets and activities, including but not limited to assets and  
1563 activities in the matched book, in the arbitrage book, and foreign  
1564 currency transactions, exceed amounts paid in lieu of interest,  
1565 amounts paid in lieu of dividends, and losses from such assets and  
1566 activities.

1567       (b) The numerator of the receipts factor includes  
1568 interest, dividends, net gains (but not less than zero) and other  
1569 income from investment assets and activities and from trading



1570 assets and activities described in paragraph (a) of this  
1571 subsection that are attributable to this state.

1572 (i) The amount of interest, dividends, net gains  
1573 (but not less than zero) and other income from investment assets  
1574 and activities in the investment account to be attributed to this  
1575 state and included in the numerator is determined by multiplying  
1576 all such income from such assets and activities by a fraction, the  
1577 numerator of which is average value of such assets which are  
1578 properly assigned to a regular place of business of the taxpayer  
1579 within this state and the denominator of which is the average  
1580 value of all such assets.

1581 (ii) The amount of interest from federal funds  
1582 sold and purchased and from securities purchased under resale  
1583 agreements and securities sold under repurchase agreements  
1584 attributable to this state and included in the numerator is  
1585 determined by multiplying the amount described in subparagraph (i)  
1586 of paragraph (a) of this subsection (13) from such funds and such  
1587 securities by a fraction, the numerator of which is the average  
1588 value of federal funds sold and securities purchased under  
1589 agreements to resell which are properly assigned to a regular  
1590 place of business of the taxpayer within this state and the  
1591 denominator of which is the average value of all such funds and  
1592 such securities.

1593 (iii) The amount of interest, dividends, gains and  
1594 other income from trading assets and activities, including but not  
1595 limited to assets and activities in the matched book, in the  
1596 arbitrage book and foreign currency transactions, (but excluding  
1597 amounts described in subparagraphs (i) or (ii) of this paragraph),  
1598 attributable to this state and included in the numerator is  
1599 determined by multiplying the amount described in subparagraph  
1600 (ii) of paragraph (a) of this subsection (13) by a fraction, the  
1601 numerator of which is the average value of such trading assets  
1602 which are properly assigned to a regular place of business of the

1603 taxpayer within this state and the denominator of which is the  
1604 average value of all such assets.

1605 (iv) For purposes of this paragraph, average value  
1606 shall be determined using the rules for determining the average  
1607 value of tangible personal property set forth in subsections (3)  
1608 and (4) of Section 27-7-24.5.

1609 (c) In lieu of using the method set forth in paragraph  
1610 (b) of this subsection (13), the taxpayer may elect, or the  
1611 commissioner may require in order to fairly represent the business  
1612 activity of the taxpayer in this state, the use of the method set  
1613 forth in this paragraph (c).

1614 (i) The amount of interest, dividends, net gains  
1615 (but not less than zero) and other income from investment assets  
1616 and activities in the investment account to be attributed to this  
1617 state and included in the numerator is determined by multiplying  
1618 all such income from such assets and activities by a fraction, the  
1619 numerator of which is the gross income from such assets and  
1620 activities which are properly assigned to a regular place of  
1621 business of the taxpayer within the state and the denominator of  
1622 which is the gross income from all such assets and activities.

1623 (ii) The amount of interest from federal funds  
1624 sold and purchased and from securities purchased under resale  
1625 agreements and securities sold under repurchase agreements  
1626 attributable to this state and included in the numerator is  
1627 determined by multiplying the amount described in subparagraph (i)  
1628 of paragraph (a) of this subsection (13) from such funds and such  
1629 securities by a fraction, the numerator of which is the gross  
1630 income from such funds and such securities which are property  
1631 assigned to a regular place of business and the taxpayer within  
1632 this state and the denominator of which is the gross income from  
1633 all such funds and such securities.

1634 (iii) The amount of interest, dividends, gains and  
1635 other income from trading assets and activities, including but not

1636 limited to assets and activities in the matched book, in the  
1637 arbitrage book and foreign currency transactions, but not  
1638 excluding amounts described in subparagraphs (i) or (ii) of this  
1639 paragraph (c), attributable to this state and included in the  
1640 numerator is determined by multiplying the amount described in  
1641 subparagraph (ii) of paragraph (a) of this subsection (13) by a  
1642 fraction, the numerator of which is the gross income from such  
1643 trading assets and activities which are properly assigned to a  
1644 regular place of business of the taxpayer within this state and  
1645 the denominator of which is the gross income from all such assets  
1646 and activities.

1647 (d) If the taxpayer elects or is required by the  
1648 commissioner to use the method set forth in paragraph (c) of this  
1649 subsection (13), it shall use this method on all subsequent  
1650 returns unless the taxpayer receives prior permission from the  
1651 commissioner to use, or the commissioner requires a different  
1652 method.

1653 (e) The taxpayer shall have the burden of proving that  
1654 an investment asset or activity or trading asset or activity was  
1655 properly assigned to a regular place of business outside of this  
1656 state by demonstrating that the day-to-day decisions regarding the  
1657 assets or activity occurred at a regular place of business outside  
1658 this state. Where the day-to-day decisions regarding an  
1659 investment asset or activity or trading asset or activity occur at  
1660 more than one (1) regular place of business and one (1) such  
1661 regular place of business is in this state and one (1) such  
1662 regular place of business outside this state, such asset or  
1663 activity shall be considered to be located at the regular place of  
1664 business of the taxpayer where the investment or trading policies  
1665 or guidelines with respect to the asset or activity are  
1666 established. Unless the taxpayer demonstrates to the contrary,  
1667 such policies and guidelines shall be presumed to be established  
1668 at the commercial domicile of the taxpayer.

1669           (14) The numerator of the receipts factor includes all other  
1670 receipts pursuant to the rules adopted by the commission.

1671           (15) All receipts which would be assigned under this section  
1672 to a state in which the taxpayer is not taxable shall be included  
1673 in the numerator of the receipts factor, if the taxpayer's  
1674 commercial domicile is in this state.

1675           SECTION 6. Section 27-8-3, Mississippi Code of 1972, is  
1676 amended as follows:

1677           27-8-3. (1) For purposes of this chapter, the following  
1678 terms shall have meanings ascribed below:

1679           (a) "C corporation" means a corporation which is not an  
1680 S corporation.

1681           (b) "Code" means the Internal Revenue Code of 1986, as  
1682 amended and as applicable to the taxable period; references to  
1683 sections of the Code shall be deemed to refer to corresponding  
1684 provisions of prior and subsequent federal tax laws.

1685           (c) "Income attributable to the state" means items of  
1686 income, loss, deduction or credit of the S corporation apportioned  
1687 to this state under Section 27-7-23(c)(2) or allocated to this  
1688 state under Section 27-7-23(c)(3).

1689           (d) "Income not attributable to the state" means all  
1690 items of income, loss, deduction or credit of the S corporation  
1691 other than income attributable to the state.

1692           (e) "Post-termination transition period" means that  
1693 period defined in Section 1377(b)(1) of the Code.

1694           (f) "Pro rata share" means the portion of any item  
1695 attributable to an S corporation shareholder for a taxable period  
1696 determined in the manner provided in, and subject to any election  
1697 made under, Section 1377(a) or 1362(e), as the case may be, of the  
1698 Code.

1699           (g) "S corporation" means a corporation for which a  
1700 valid election under Section 1362(a) of the Code is in effect.

1701 (h) "Taxable period" means any taxable year or portion  
1702 of a taxable year during which a corporation is an S corporation.

1703 (2) Except as otherwise expressly provided or clearly  
1704 appearing from the context, any term used in this chapter shall  
1705 have the same meaning as when used in a comparable context in the  
1706 Code, or in any statute relating to federal income taxes, in  
1707 effect for the taxable period. Due consideration shall be given  
1708 in the interpretation of this chapter to applicable sections of  
1709 the Code in effect from time to time and to federal rulings and  
1710 regulations interpreting such sections, provided such Code,  
1711 rulings and regulations do not conflict with the provisions of  
1712 this chapter.

1713 SECTION 7. Section 27-13-13, Mississippi Code of 1972, is  
1714 amended as follows:

1715 27-13-13. (1) In the case of organizations doing business  
1716 both within and without Mississippi, the value of the capital  
1717 employed in this state shall be determined by first computing the  
1718 ratio between (1) the real and tangible personal property owned in  
1719 Mississippi and gross receipts from business carried on in  
1720 Mississippi, and (2) the total real and tangible personal property  
1721 owned and gross receipts wherever located and from wherever  
1722 received. Said ratio then shall be applied to the total capital  
1723 stock, surplus, undivided profits and true reserves and the result  
1724 of that application shall be the capital employed in this state.  
1725 Provided, however, that the amount of the determined capital in  
1726 Mississippi shall in no case be less than the assessed value of  
1727 the Mississippi property of the organization for the year  
1728 preceding the year in which the return is due.

1729 (2) (a) For the purpose of this section, for tax returns  
1730 for tax years ending before January 1, 1999, an organization which  
1731 uses a formula method of apportionment in making income tax  
1732 returns to this state shall determine its gross receipts from  
1733 business carried on in Mississippi by applying to total unitary

1734 receipts the ratio achieved, or which would be achieved, by such  
1735 formula and adding to the result of such application any  
1736 nonunitary Mississippi receipts.

1737           (b) For the purpose of this section, for tax returns  
1738 for tax years ending on or after January 1, 1999, the gross  
1739 receipts of an organization that is required to use a formula  
1740 method of apportionment in making income tax returns to this state  
1741 shall be the same (both as to gross receipts from business carried  
1742 on in Mississippi and gross receipts wherever located) as the  
1743 gross receipts (or sales) used for the receipts or sales factor in  
1744 the applicable income tax formula. However, gross receipts from  
1745 business carried on in Mississippi, for the purposes of this  
1746 section, shall also include any receipts from the taxpayer's  
1747 business operations which are not apportioned but rather are  
1748 directly allocated or assigned to this state. If the taxpayer is  
1749 required to use a formula method of apportionment in making income  
1750 tax returns which does not have a receipts or sales factor, then  
1751 the receipts factor for the franchise tax formula shall be  
1752 determined by regulation of the commission.

1753           (c) For purposes of this section, for tax returns for  
1754 tax years ending on or after December 31, 2001, the ratio  
1755 described in subsection (1) of this section shall include all  
1756 gross receipts as specified in paragraph (b) of this subsection  
1757 and where a taxpayer owns a direct or indirect interest in a  
1758 flow-through entity, the taxpayer shall include in the ratio its  
1759 portion of the flow-through entity's (i) real and tangible  
1760 personal property owned in Mississippi and gross receipts from  
1761 business carried on in Mississippi, and (ii) total real and  
1762 tangible property owned and gross receipts wherever located and  
1763 from wherever received. The taxpayer shall include its portion of  
1764 the flow-through entity's assessed value of Mississippi property  
1765 when determining its assessed value of Mississippi property. A  
1766 flow-through entity's real property, tangible personal property,

1767 gross receipts and assessed value of property shall include its  
1768 portion of these same items of any flow-through entity in which it  
1769 owns a direct or indirect interest. For purposes of this section,  
1770 flow-through entity is every form of organization other than a  
1771 corporation, association or joint stock company or other  
1772 organization which would qualify for exemption under Section  
1773 27-13-63 if the organization were a corporation, association or  
1774 joint stock company.

1775 SECTION 8. This act shall apply to taxable years beginning  
1776 on or after January 1, 2001.

1777 SECTION 9. This act shall take effect and be in force from  
1778 and after January 1, 2001.