

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

To: Ways and Means

HOUSE BILL NO. 1695  
(As Passed the House)

1 AN ACT TO AMEND SECTION 27-7-9, MISSISSIPPI CODE OF 1972, TO  
2 DELETE THE PROVISION PROVIDING THAT COMPLIANCE WITH FEDERAL  
3 REGULATIONS PROMULGATED UNDER SECTION 482 OF THE UNITED STATES  
4 INTERNAL REVENUE CODE SHALL CONSTITUTE "ARMS-LENGTH" FOR THE  
5 PURPOSE OF DETERMINING WHETHER A TRANSACTION BY A CORPORATION OR  
6 OTHER LEGAL ENTITY IS AT "ARMS-LENGTH" FOR STATE INCOME TAX  
7 PURPOSES; 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. \* \* \*

433 (k) Sale or exchange of residence.

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

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

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

445 (1) Distributions by corporations.

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

458 ownership, distribution, tax credit allowed, and any other  
459 information requested.

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

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

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

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

492           (6) Cancellation or redemption of stock. If a  
493 corporation cancels or redeems its stock (whether or not such  
494 stock was issued as a stock dividend) at such time and in such  
495 manner as to make the distribution and cancellation or redemption  
496 in whole or in part essentially equivalent to the distribution of  
497 a taxable dividend, the amount so distributed in redemption or  
498 cancellation of the stock, to the extent that it represents a  
499 distribution of earnings or profits accumulated after March 16,  
500 1912, shall be treated as a taxable dividend.

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

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

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

519           27-7-15. (1) For the purposes of this article, except as  
520 otherwise provided, the term "gross income" means and includes the  
521 income of a taxpayer derived from salaries, wages, fees or  
522 compensation for service, of whatever kind and in whatever form



523 paid, including income from governmental agencies and subdivisions  
524 thereof; or from professions, vocations, trades, businesses,  
525 commerce or sales, or renting or dealing in property, or  
526 reacquired property; also from annuities, interest, rents,  
527 dividends, securities, insurance premiums, reinsurance premiums,  
528 considerations for supplemental insurance contracts, or the  
529 transaction of any business carried on for gain or profit, or  
530 gains, or profits, and income derived from any source whatever and  
531 in whatever form paid. The amount of all such items of income  
532 shall be included in the gross income for the taxable year in  
533 which received by the taxpayer. The amount by which an eligible  
534 employee's salary is reduced pursuant to a salary reduction  
535 agreement authorized under Section 25-17-5 shall be excluded from  
536 the term "gross income" within the meaning of this article.

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

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

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

545 (i) Prior to January 1, 2001, federal rules,  
546 regulations and revenue procedures shall be followed with respect  
547 to installment sales except they shall be applied and administered  
548 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the  
549 106th Congress had not been enacted. This provision will  
550 generally affect taxpayers, reporting on the accrual method of  
551 accounting, entering into installment note agreements on or after  
552 December 17, 1999. Any gain or profit resulting from the casual  
553 sale of property will be recognized in the year of sale.

554 (ii) From and after January 1, 2001, federal  
555 rules, regulations and revenue procedures shall be followed with

556 respect to installment sales except as provided in this  
557 subparagraph (ii). Gain or profit from the casual sale of  
558 property shall be recognized in the year of sale. When a taxpayer  
559 recognizes gain on the casual sale of property in which the gain  
560 is deferred for federal income tax purposes, a taxpayer may elect  
561 to defer the payment of tax resulting from the gain as allowed and  
562 to the extent provided under regulations prescribed by the  
563 commissioner. If the payment of the tax is made on a deferred  
564 basis, the tax shall be computed based on the applicable rate for  
565 the income reported in the year the payment is made. Except as  
566 otherwise provided in subparagraph (iii) of this paragraph (b),  
567 deferring the payment of the tax shall not affect the liability  
568 for the tax. If at any time the installment note is sold,  
569 contributed, transferred or disposed of in any manner and for any  
570 purpose by the original note holder, or the original note holder  
571 is merged, liquidated, dissolved or withdrawn from this state,  
572 then all deferred tax payments under this section shall  
573 immediately become due and payable.

574 (iii) If the selling price of the property is  
575 reduced by any alteration in the terms of an installment note,  
576 including default by the purchaser, the gain to be recognized is  
577 recomputed based on the adjusted selling price in the same manner  
578 as for federal income tax purposes. The tax on this amount, less  
579 the previously paid tax on the recognized gain, is payable over  
580 the period of the remaining installments. If the tax on the  
581 previously recognized gain has been paid in full to this state,  
582 the return on which the payment was made may be amended for this  
583 purpose only. The statute of limitations in Section 27-7-49 shall  
584 not bar an amended return for this purpose.

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

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

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

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

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

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

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

618           (b) The amount received by the insured as a return of  
619 premium or premiums paid by him under life insurance policies,

620 endowment, or annuity contracts, either during the term or at  
621 maturity or upon surrender of the contract.

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

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

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

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

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

650 (h) In case of insurance companies, there shall be  
651 excluded from gross income such portion of actual premiums  
652 received from an individual policyholder as is paid back or

653 credited to or treated as an abatement of premiums of such  
654 policyholder within the taxable year.

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

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

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

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

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

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

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

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

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

716           (r) The amount deposited in a medical savings account,  
717 and any interest accrued thereon, that is a part of a medical

718 savings account program as specified in the Medical Savings  
719 Account Act under Sections 71-9-1 through 71-9-9; provided,  
720 however, that any amount withdrawn from such account for purposes  
721 other than paying eligible medical expense or to procure health  
722 coverage, shall be included in gross income.

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

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

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

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

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

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

747 (a) Members of the Armed Forces. Gross income does not  
748 include compensation received for active service as a member of  
749 the Armed Forces of the United States for any month during any  
750 part of which such member is in a missing status, as defined in

751 paragraph (d) of this subsection, during the Vietnam Conflict as a  
752 result of such conflict.

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

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

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

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

780 (f) "Employee" means one who is a citizen or national  
781 of the United States or an alien admitted to the United States for  
782 permanent residence and is a resident of the State of Mississippi



783 and is employed in or under a federal executive agency or  
784 department of the Armed Forces.

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

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

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

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

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

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

806 (1) **Business deductions.**

807 (a) Business expenses. All the ordinary and necessary  
808 expenses paid or incurred during the taxable year in carrying on  
809 any trade or business, including a reasonable allowance for  
810 salaries or other compensation for personal services actually  
811 rendered; nonreimbursable traveling expenses incident to current  
812 employment, including a reasonable amount expended for meals and  
813 lodging while away from home in the pursuit of a trade or  
814 business; and rentals or other payments required to be made as a  
815 condition of the continued use or possession, for purposes of the

816 trade or business of property to which the taxpayer has not taken  
817 or is not taking title or in which he had no equity. Expense  
818 incurred in connection with earning and distributing nontaxable  
819 income is not an allowable deduction. Limitations on  
820 entertainment expenses shall conform to the provisions of the  
821 Internal Revenue Code of 1986.

822 (b) Interest. All interest paid or accrued during the  
823 taxable year on business indebtedness, except interest upon the  
824 indebtedness for the purchase of tax-free bonds, or any stocks,  
825 the dividends from which are nontaxable under the provisions of  
826 this article; provided, however, in the case of securities  
827 dealers, interest payments or accruals on loans, the proceeds of  
828 which are used to purchase tax-exempt securities, shall be  
829 deductible if income from otherwise tax-free securities is  
830 reported as income. Investment interest expense shall be limited  
831 to investment income. Interest expense incurred for the purchase  
832 of treasury stock, to pay dividends, or incurred as a result of an  
833 undercapitalized affiliated corporation may not be deducted unless  
834 an ordinary and necessary business purpose can be established to  
835 the satisfaction of the commissioner. For the purposes of this  
836 paragraph, the phrase "interest upon the indebtedness for the  
837 purchase of tax-free bonds" applies only to the indebtedness  
838 incurred for the purpose of directly purchasing tax-free bonds and  
839 does not apply to any other indebtedness incurred in the regular  
840 course of the taxpayer's business. Any corporation, association,  
841 organization or other entity taxable under Section 27-7-23(c)  
842 shall allocate interest expense as provided in Section  
843 27-7-23(c)(3)(I).

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

849 business or in the production of taxable income. In the case of  
850 an individual, taxes permitted as an itemized deduction under the  
851 provisions of subsection (3)(a) of this section are to be claimed  
852 thereunder.

853 (d) Business losses.

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

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

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

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

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

879 (h) Contributions or gifts. Except as otherwise  
880 provided in subsection (3)(a) of this section for individuals,  
881 contributions or gifts made by corporations within the taxable

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

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

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

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

914 United States, and the rules, regulations, rulings and  
915 determinations promulgated thereunder, provided that:

916 (i) The plan or trust be irrevocable.

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

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

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

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

944 For any taxable year ending after December 31, 1997, the  
945 period for net operating loss carrybacks and net operating loss  
946 carryovers shall be the same as those established by the Internal

947 Revenue Code and the rules, regulations, rulings and  
948 determinations promulgated thereunder.

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

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

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

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

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

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

976 (n) Dividend distributions - real estate investment  
977 trusts. "Real estate investment trust" (hereinafter referred to  
978 as REIT) shall have the meaning ascribed to such term in Section  
979 856 of the federal Internal Revenue Code of 1986, as amended. A

980 REIT is allowed a dividend distributed deduction if the dividend  
981 distributions meet the requirements of Section 857 or are  
982 otherwise deductible under Section 858 or 860, federal Internal  
983 Revenue Code of 1986, as amended. In addition:

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

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

993 (iii) A holding corporation receiving a dividend  
994 from a REIT shall not be allowed the deduction in Section  
995 27-7-15(4)(t).

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

1000 The commissioner is authorized to promulgate rules and  
1001 regulations consistent with the provisions in Section 269 of the  
1002 federal Internal Revenue Code of 1986, as amended, so as to  
1003 prevent the evasion or avoidance of state income tax.

1004 (o) Contributions to college savings trust fund  
1005 accounts. Contributions or payments to a Mississippi Affordable  
1006 College Savings Program account are deductible as provided under  
1007 Section 37-155-113. Payments made under a prepaid tuition  
1008 contract entered into under the Mississippi Prepaid Affordable  
1009 College Tuition Program are deductible as provided under Section  
1010 37-155-17.

1011 (2) **Restrictions on the deductibility of certain intangible**  
1012 **expenses and interest expenses with a related member.**

1013           (a) As used in this subsection (2):

1014                   (i) "Intangible expenses and costs" include:

1015                           1. Expenses, losses and costs for, related  
1016 to, or in connection directly or indirectly with the direct or  
1017 indirect acquisition, use, maintenance or management, ownership,  
1018 sale, exchange or any other disposition of intangible property to  
1019 the extent such amounts are allowed as deductions or costs in  
1020 determining taxable income under this chapter;

1021                           2. Expenses or losses related to or incurred  
1022 in connection directly or indirectly with factoring transactions  
1023 or discounting transactions;

1024                           3. Royalty, patent, technical and copyright  
1025 fees;

1026                           4. Licensing fees; and

1027                           5. Other similar expenses and costs.

1028                   (ii) "Intangible property" means patents, patent  
1029 applications, trade names, trademarks, service marks, copyrights  
1030 and similar types of intangible assets.

1031                   (iii) "Interest expenses and cost" means amounts  
1032 directly or indirectly allowed as deductions for purposes of  
1033 determining taxable income under this chapter to the extent such  
1034 interest expenses and costs are directly or indirectly for,  
1035 related to, or in connection with the direct or indirect  
1036 acquisition maintenance, management, ownership, sale, exchange or  
1037 disposition of intangible property.

1038                   (iv) "Related member" means an entity or person  
1039 that, with respect to the taxpayer during all or any portion of  
1040 the taxable year, is a related entity, a component member as  
1041 defined in the Internal Revenue Code, or is an entity or a person  
1042 to or from whom there is attribution of stock ownership in  
1043 accordance with Section 1563(e) of the Internal Revenue Code.

1044                   (vi) "Related entity" means:



1045 1. A stockholder who is an individual or a  
1046 member of the stockholder's family, as defined in regulations  
1047 prescribed by the commissioner, if the stockholder and the members  
1048 of the stockholder's family own, directly, indirectly,  
1049 beneficially or constructively, in the aggregate, at least fifty  
1050 percent (50%) of the value of the taxpayer's outstanding stock;

1051 2. A stockholder, or a stockholder's  
1052 partnership, limited liability company, estate, trust or  
1053 corporation, if the stockholder and the stockholder's  
1054 partnerships, limited liability companies, estates, trusts and  
1055 corporations own, directly, indirectly, beneficially or  
1056 constructively, in the aggregate, at least fifty percent (50%) of  
1057 the value of the taxpayer's outstanding stock;

1058 3. A corporation, or a party related to the  
1059 corporation in a manner that would require an attribution of stock  
1060 from the corporation to the party or from the party to the  
1061 corporation, if the taxpayer owns, directly, indirectly,  
1062 beneficially or constructively, at least fifty percent (50%) of  
1063 the value of the corporation's outstanding stock under regulation  
1064 prescribed by the commissioner;

1065 4. Any entity or person which would be a  
1066 related member under this section if the taxpayer were considered  
1067 a corporation for purposes of this section.

1068 (b) In computing net income, a taxpayer shall add back  
1069 otherwise deductible interest expenses and costs and intangible  
1070 expenses and costs directly or indirectly paid, accrued to or  
1071 incurred, in connection directly or indirectly with one or more  
1072 direct or indirect transactions with one or more related members.

1073 (c) The adjustments required by this subsection shall  
1074 not apply to such portion of interest expenses and costs and  
1075 intangible expenses and costs that the taxpayer can establish  
1076 meets one (1) of the following:

1077                   (i) The related member directly or indirectly  
1078 paid, accrued or incurred such portion to a person during the same  
1079 income year who is not a related member, and the transaction  
1080 giving rise to the interest expenses and costs or the intangible  
1081 expenses and costs between the taxpayer and the related member did  
1082 not have the purpose of avoiding any portion of the tax due under  
1083 this chapter; or

1084                   (ii) The transaction giving rise to the interest  
1085 expenses and costs or intangible expenses and costs between the  
1086 taxpayer and related member was done for a valid business purpose  
1087 and the related member to which the income is paid is subject to  
1088 taxation by another state at a tax rate equal to or higher than  
1089 the rate applicable in Mississippi; or

1090                   (iii) The related member is not primarily engaged  
1091 in the acquisition, use, maintenance or management, ownership,  
1092 sale, exchange or any other disposition of intangible property.

1093                   (d) Nothing in this subsection shall require a taxpayer  
1094 to add to its net income more than once any amount of interest  
1095 expenses and costs or intangible expenses and costs that the  
1096 taxpayer pays, accrues or incurs to a related member.

1097                   (e) The commissioner may prescribe such regulations as  
1098 necessary or appropriate to carry out the purposes of this  
1099 subsection, including, but not limited to, clarifying definitions  
1100 of terms, rules of stock attribution, factoring and discount  
1101 transactions.

1102           (3) Individual nonbusiness deductions.

1103                   (a) The amount allowable for individual nonbusiness  
1104 itemized deductions for federal income tax purposes, except the  
1105 deduction for state income taxes paid, where the individual is  
1106 eligible to elect, for the taxable year, to itemize deductions on  
1107 his federal return; or

1108                   (b) In lieu of the individual nonbusiness itemized  
1109 deductions authorized in paragraph (a), for all purposes other

1110 than ordinary and necessary expenses paid or incurred during the  
1111 taxable year in carrying on any trade or business, an optional  
1112 standard deduction of:

1113                   (i) Three Thousand Four Hundred Dollars  
1114 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred  
1115 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand  
1116 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter  
1117 in the case of married individuals filing a joint or combined  
1118 return;

1119                   (ii) One Thousand Seven Hundred Dollars  
1120 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred  
1121 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand  
1122 Three Hundred Dollars (\$2,300.00) for each calendar year  
1123 thereafter in the case of married individuals filing separate  
1124 returns;

1125                   (iii) Three Thousand Four Hundred Dollars  
1126 (\$3,400.00) in the case of a head of family; or

1127                   (iv) Two Thousand Three Hundred Dollars  
1128 (\$2,300.00) in the case of an individual who is not married.

1129           In the case of a husband and wife living together, having  
1130 separate incomes, and filing combined returns, the standard  
1131 deduction authorized may be divided in any manner they choose. In  
1132 the case of separate returns by a husband and wife, the standard  
1133 deduction shall not be allowed to either if the taxable income of  
1134 one of the spouses is determined without regard to the standard  
1135 deduction.

1136                   (c) A nonresident individual shall be allowed the same  
1137 individual nonbusiness deductions as are authorized for resident  
1138 individuals in paragraph (a) or (b) of this subsection; however,  
1139 the nonresident individual is entitled only to that proportion of  
1140 the individual nonbusiness deductions as his net income from  
1141 sources within the State of Mississippi bears to his total or  
1142 entire net income from all sources.

1143 (3) Nothing in this section shall permit the same item to be  
1144 deducted more than once, either in fact or in effect.

1145 SECTION 4. Section 27-7-23, Mississippi Code of 1972, is  
1146 amended as follows:

1147 27-7-23. (a) **Definitions.**

1148 (1) "Doing business" means the operation of any  
1149 business enterprise or activity in Mississippi for financial  
1150 profit or economic gain, including, but not limited to, the  
1151 following:

1152 (A) The regular maintenance of an office or other  
1153 place of business in Mississippi; or

1154 (B) The regular maintenance in Mississippi of an  
1155 inventory of merchandise or material for sale, distribution or  
1156 manufacture, regardless of whether kept on the premises of the  
1157 taxpayer or otherwise; or

1158 (C) The selling or distributing of merchandise to  
1159 customers in Mississippi directly from a company-owned or operated  
1160 vehicle when title to the merchandise is transferred from the  
1161 seller or distributor to the customer at the time of the sale or  
1162 distribution (transient selling); or

1163 (D) The regular rendering of service to clients or  
1164 customers in Mississippi in person or by agents or employees; or

1165 (E) The owning, renting or operating of business  
1166 or income-producing property, real or personal, in Mississippi; or

1167 (F) The performing of contracts, prime or sublet  
1168 work, for the construction, repair or renovation of real or  
1169 personal property.

1170 (2) "Business income" means income of any type or  
1171 class, and from any activity that meets the relationship described  
1172 in the transactional test or the functional test described in this  
1173 paragraph (2). The classification of income by occasionally used  
1174 labels, including, but not limited to, manufacturing income,  
1175 compensation for services, sales income interest, dividends,

1176 rents, royalties, gains, operating income, and nonoperating income  
1177 shall not be considered when determining whether income is  
1178 business or nonbusiness income. All income of the taxpayer is  
1179 business income unless clearly classifiable as nonbusiness income.  
1180 A taxpayer seeking to overcome a classification of income as  
1181 business income must establish by clear and convincing evidence  
1182 that the income has been incorrectly classified.

1183 (A) Transactional test. Business income includes  
1184 income arising from transactions and activity in the regular  
1185 course of the taxpayer's trade or business.

1186 (i) If the transaction or activity is in the  
1187 regular course of the taxpayer's trade or business, part of which  
1188 trade or business is conducted within Mississippi, the resulting  
1189 income of the transaction or activity is business income for  
1190 Mississippi. Income may be business income even though the actual  
1191 transaction or activity that gives rise to the income does not  
1192 occur in Mississippi.

1193 (ii) For a transaction or activity to be in  
1194 the regular course of the taxpayer's trade or business, the  
1195 transactions or activity need not be one that frequently occurs in  
1196 the trade or business, although most frequently occurring  
1197 transactions or activities shall be considered to be in the  
1198 regular course of a trade or business. It is sufficient to  
1199 classify a transaction or activity as being in the regular course  
1200 of a trade or business if it is reasonable to conclude  
1201 transactions of that type are customary in the kind of trade or  
1202 business being conducted or are within the scope of what the trade  
1203 or business does.

1204 (B) Functional test. Business income includes  
1205 income from tangible and intangible property if the acquisition,  
1206 management and/or disposition of the property constitute integral  
1207 parts of the taxpayer's regular trade or business operation.

1208                   (i) Under the functional test, business  
1209 income need not be derived from transactions or activities that  
1210 are in the regular course of the taxpayer's own particular trade  
1211 or business. It shall be sufficient if the property from which  
1212 the income is derived is or was an integral, functional, necessary  
1213 or operative component of the taxpayer's trade or business  
1214 operations, part of which trade or business is or was conducted  
1215 within this state.

1216                   (ii) Income that is derived from isolated  
1217 sales, leases, assignments, licenses and other infrequently  
1218 occurring dispositions, transfers or transactions involving  
1219 property, including transactions made in liquidation or the  
1220 winding up of business is business income if the property is or  
1221 was used in the taxpayer's trade or business operation. Income  
1222 from the licensing of intangible assets, such as patents,  
1223 copyrights, trademarks, service marks, goodwill, know-how, trade  
1224 secrets and similar assets, that were developed or acquired for  
1225 use by the taxpayer in his trade or business operations,  
1226 constitute business income whether the licensing itself  
1227 constituted the operation of a trade or business and whether the  
1228 taxpayer remains in the same trade or business from or for which  
1229 the intangible asset was developed or acquired.

1230                   (iii) Under the functional test, income from  
1231 intangible property is business income when the intangible  
1232 property serves an operating function, as opposed to solely an  
1233 investment function. The relevant inquiry shall focus on whether  
1234 the property is or was held in furtherance of the taxpayer's trade  
1235 or business, that is, on the objective characteristics of the  
1236 intangible property's use or acquisition and its relation to the  
1237 taxpayer and the taxpayer's activities. The functional test is  
1238 not satisfied where the holding of the property is limited solely  
1239 to an investment function as in the case where the holding of the

1240 property is limited to mere financial betterment of the taxpayer  
1241 in general.

1242 (iv) If the property is or was held in  
1243 furtherance of the taxpayer's trade or business beyond mere  
1244 financial betterment, then income from the property may be  
1245 business income even though the actual transaction or activity  
1246 involving the property that gives rise to the income does not  
1247 occur in Mississippi.

1248 (v) If, with respect to an item of property,  
1249 a taxpayer takes a deduction from business income that is  
1250 apportioned to Mississippi, or includes that item of property in  
1251 the property factor, it is presumed that the item of property is  
1252 or was integral to the taxpayer's trade or business operations.  
1253 No presumption arises from the absence of any of this action.

1254 (vi) Application of the functional test is  
1255 generally unaffected by the form of the property. Income arising  
1256 from intangible property is business income when the intangible  
1257 property itself or the underlying value of the intangible property  
1258 is or was an integral, functional, necessary or operative  
1259 component to the taxpayer's trade or business operation.  
1260 Therefore, while treatment of income derived from transactions  
1261 involving intangible property as business income may be supported  
1262 by a finding that the issuer of the intangible property and the  
1263 taxpayer are engaged in the same trade or business, establishment  
1264 of such a relationship is not the exclusive basis for concluding  
1265 that the income constitutes business income. It is sufficient to  
1266 support a finding of business income if the holding of the  
1267 intangible property served an operational rather than an  
1268 investment function.

1269 (3) "Nonbusiness income" means all income that does not  
1270 meet the definition of business income.

1271           (4) "Commercial domicile" means the principal place  
1272 from which the trade or business of the taxpayer is directed or  
1273 managed.

1274           (5) "State" means any state of the United States, the  
1275 District of Columbia, the Commonwealth of Puerto Rico, any  
1276 territory or possession of the United States, and any foreign  
1277 country or political subdivision thereof.

1278           (b) **Nonresident individuals, partnerships, trusts and**  
1279 **estates.**

1280           (1) The tax imposed by this article shall apply to the  
1281 entire net income of a taxable nonresident derived from  
1282 employment, trade, business, professional, personal service or  
1283 other activity for financial gain or profit, performed or carried  
1284 on within Mississippi, including the rental of real or personal  
1285 property located within this state or for use herein and including  
1286 the sale or exchange or other disposition of tangible or  
1287 intangible property having a situs in Mississippi.

1288           (2) Income derived from trade, business or other  
1289 commercial activity shall be taxed to the extent that it is  
1290 derived from such activity within this state. Mississippi net  
1291 income shall be determined \* \* \* in the \* \* \* manner \* \* \*  
1292 prescribed by the commissioner for the allocation and/or  
1293 apportionment of income of foreign corporations having income from  
1294 sources both within and without the state.

1295           (3) A taxable nonresident shall be allowed to deduct  
1296 expenses, interest, taxes, losses, bad debts, depreciation and  
1297 similar business expenses only to the extent that they are  
1298 allowable under this article and are attributable to the  
1299 production of income allocable to and taxable by the State of  
1300 Mississippi. As to allowable deductions essentially personal in  
1301 nature, such as contributions to charitable organizations, medical  
1302 expenses, taxes, interest and the optional standard deduction,  
1303 such taxable nonresident shall be allowed deductions therefor in



1304 the ratio that the net income from sources within Mississippi  
1305 bears to the total net income from all sources of such taxable  
1306 nonresident, computed as if such taxable nonresident were a  
1307 resident of Mississippi.

1308 (c) **Foreign corporations, associations, organizations and**  
1309 **other entities.**

1310 (1) Corporations and organizations required to file.  
1311 All foreign corporations and other organizations which have  
1312 obtained a certificate of authority from the Secretary of State to  
1313 do business in Mississippi, or corporations or organizations which  
1314 are in fact doing business in Mississippi, are subject to the  
1315 income tax levy and are required to file annual income tax returns  
1316 unless the corporation or organization is specifically exempt from  
1317 tax by this article.

1318 (2) Allocation and apportionment of income. Except as  
1319 provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and  
1320 27-7-24.7, Mississippi Code of 1972, any corporation or  
1321 organization having business income from business activity which  
1322 is taxable both within and without this state shall allocate and  
1323 apportion its net business income as prescribed by the  
1324 commissioner. If the business income of the corporation is  
1325 derived solely from property owned or business done in this state  
1326 and the corporation is not taxable in another state, the entire  
1327 business income shall be allocated to this state. \* \* \* A  
1328 corporation is taxable in another state if, \* \* \* in that state  
1329 the corporation is subject to a net income tax, or a franchise tax  
1330 measured by net income, or \* \* \* if that state has jurisdiction to  
1331 subject the corporation to a net income tax regardless of  
1332 whether \* \* \* the state does or does not subject the corporation  
1333 to a net income tax.

1334 \* \* \*

1335 (3) Nonbusiness income. Rents and royalties from real  
1336 or tangible personal property, capital gains, interest, dividends,

1337 or patent or copyright royalties, to the extent that they  
1338 constitute nonbusiness income, shall be allocated as follows:

1339 (A) Net rents and royalties from real property are  
1340 allocable to the state in which the property is located.

1341 (B) Net rents and royalties from tangible personal  
1342 property are allocable to the state in which the property is used,  
1343 or to this state in their entirety if the corporation's commercial  
1344 domicile is in this state and the corporation is not organized  
1345 under the laws of or taxable in the state in which the property is  
1346 utilized.

1347 (C) Capital gains and losses from sales of real  
1348 property are allocable to the state in which the property is  
1349 located.

1350 (D) Capital gains and losses from sales of  
1351 tangible personal property are allocable to the state in which the  
1352 property is located, or to this state if the corporation's  
1353 commercial domicile is in this state and the corporation is not  
1354 taxable in the state in which the property had a situs.

1355 (E) Capital gains and losses from sales of  
1356 intangible personal property are allocable to the state of the  
1357 corporation's commercial domicile.

1358 (F) Interest and dividends are allocable to the  
1359 state of the corporation's commercial domicile.

1360 (G) Patent and copyright royalties are allocable  
1361 to the state in which the patent or copyright is utilized by the  
1362 payer, or to this state if and to the extent that the patent or  
1363 copyright is utilized by the payer in a state in which the  
1364 corporation is not taxable and the corporation's commercial  
1365 domicile is in this state.

1366 (H) Any other nonbusiness income shall be  
1367 allocated as prescribed by the commissioner.

1368 (I) All expenses connected with earning  
1369 nonbusiness income, such as interest, taxes, general and

1370 administrative expenses and such other expenses relating to the  
1371 production of nonbusiness income, shall be deducted from gross  
1372 nonbusiness income. Nonbusiness interest expense shall be  
1373 computed by using the ratio of nonbusiness assets to total assets  
1374 applied to total interest expense.

1375 (d) **Foreign lenders.**

1376 (1) In the case of any foreign lender, (corporation,  
1377 association, organization, individual, partnership, trusts or  
1378 estates), other than: (A) a foreign insurance company subject to  
1379 certification by the Commissioner of Insurance, as provided by  
1380 Section 83-21-1 et seq.; or (B) a foreign lender qualified under  
1381 the general laws of this state to do business herein; or (C) a  
1382 foreign lender which maintains an office or place of business  
1383 within this state; or (D) lenders that sold properties in this  
1384 state and financed such sale and reported on the installment  
1385 method, interest income received or accrued on or after January 1,  
1386 1977, from loans secured by real estate or from lending on the  
1387 security of real estate located within this state shall be  
1388 excluded from Mississippi gross income and exempt from the  
1389 Mississippi income tax levy and the reporting requirements.

1390 (2) In the case of any foreign lender exempted in  
1391 paragraph (1) of this subsection, interest income received on any  
1392 loan finalized or consummated after January 1, 1977, shall be  
1393 excluded from Mississippi gross income and the net profits derived  
1394 therefrom shall be exempt from the Mississippi income tax levy for  
1395 the life of such loan.

1396 (e) **Insurance companies.** Insurance companies, other than  
1397 life insurance companies, deriving premium income from within and  
1398 without the state, may determine their Mississippi net income from  
1399 underwriting by apportioning to this state a part of their total  
1400 net underwriting income by such processes or formulas of general  
1401 apportionment as are prescribed by the commissioner; provided that  
1402 a company adopting this method of reporting for any year must

1403 adhere to said method of reporting for subsequent years, unless  
1404 permission is granted by the commissioner to change to a different  
1405 method of reporting; and provided that all affiliated companies of  
1406 the same group shall use the same method of reporting.

1407       (f) **Bond requirements.** Any individual or corporation  
1408 subject to the tax imposed by this article, engaged in the  
1409 business of performing contracts which may require the payment of  
1410 net income taxes, may be required by the commissioner, before  
1411 entering into the performance of any contract or contracts the  
1412 consideration of which is more than Ten Thousand Dollars  
1413 (\$10,000.00), to execute and file a good and valid bond with a  
1414 surety company authorized to do business in this state, or with  
1415 sufficient sureties to be approved by the commissioner,  
1416 conditioned that all taxes which may accrue to the State of  
1417 Mississippi will be paid when due. Provided, however, that such  
1418 bond shall not exceed five percent (5%) of the total contracts  
1419 entered into during the taxable period, and, provided further,  
1420 that any taxpayer, in lieu of furnishing such bond, may pay the  
1421 maximum sum required herein as advance payment of taxes due on the  
1422 net income realized from any contract or contracts performed or  
1423 completed in this state.

1424       SECTION 5. Section 27-7-24.3, Mississippi Code of 1972, is  
1425 amended as follows:

1426       27-7-24.3. (1) The receipts factor is a fraction, the  
1427 numerator of which is the receipts of the taxpayer in this state  
1428 during the taxable year and the denominator of which is the  
1429 receipts of the taxpayer within and without this state during the  
1430 taxable year. The method of calculating receipts for purposes of  
1431 the denominator is the same as the method used in determining  
1432 receipts for purposes of the numerator. The receipts factor shall  
1433 include only those receipts described herein which constitute  
1434 business income and are included in the computation of the  
1435 apportionable income base for the taxable year.

1436           (2) The numerator of the receipts factor includes receipts  
1437 from the lease or rental of real property owned by the taxpayer if  
1438 the property is located within this state on receipts from the  
1439 sublease of real property if the property is located within this  
1440 state.

1441           (3) (a) Except as described in paragraph (b) of this  
1442 subsection, the numerator of the receipts factor includes receipts  
1443 from the lease or rental of tangible personal property owned by  
1444 the taxpayer if the property is located within this state when it  
1445 is first placed in service by the lessee.

1446           (b) Receipts from the lease or rental of transportation  
1447 property owned by the taxpayer are included in the numerator of  
1448 the receipts factor to the extent that the property is used in  
1449 this state. The extent an aircraft will be deemed to be used in  
1450 this state and the amount of the receipts that is to be included  
1451 in the numerator of this state's receipts factor is determined by  
1452 multiplying all the receipts from the lease or rental of the  
1453 aircraft by a fraction, the numerator of which is the number of  
1454 landings of the aircraft in this state and the denominator of  
1455 which is the total number of landings of the aircraft. If the  
1456 extent of the use of any transportation property within the state  
1457 cannot be determined, then the property will be deemed to be used  
1458 wholly in the state in which the property has its principal base  
1459 of operations. A motor vehicle will be deemed to be used wholly  
1460 in the state in which it is registered.

1461           (4) (a) The numerator of the receipts factor includes  
1462 interest and fees or penalties in the nature of interest from  
1463 loans secured by real property if the property is located within  
1464 this state. If the property is located both within this state and  
1465 one or more other states, the receipts described in this  
1466 subsection are included in the numerator of the receipts factor if  
1467 more than fifty percent (50%) of the fair market value of the real  
1468 property is located within this state. If more than fifty percent

1469 (50%) of the fair market value of the real property is not located  
1470 within any one state, then the receipts described in this  
1471 subsection shall be included in the numerator of the receipts  
1472 factor if the borrower is located in this state.

1473 (b) The determination of whether the real property  
1474 securing a loan is located within this state shall be made as of  
1475 the time the original agreement was made and any and all  
1476 subsequent substitutions of collateral shall be disregarded.

1477 (5) The numerator of the receipts factor includes interest  
1478 and fees or penalties in the nature of interest from loans not  
1479 secured by real property if the borrower is located in this state.

1480 (6) The numerator of the receipts factor includes net gains  
1481 from the sale of loans. Net gains from the sale of loans includes  
1482 income recorded under coupon stripping rules of Section 1286 of  
1483 the Internal Revenue Code, as in effect January 1, 1996.

1484 (a) The amount of net gains (but not less than zero)  
1485 from the sale of loans secured by real property included in the  
1486 numerator is determined by multiplying such net gains by a  
1487 fraction the numerator of which is the amount included in the  
1488 numerator of the receipts factor pursuant to subsection (4) of  
1489 this section and the denominator of which is the total amount of  
1490 interest and fees or penalties in the nature of interest from  
1491 loans secured by real property.

1492 (b) The amount of net gains (but not less than zero)  
1493 from the sale of loans not secured by real property included in  
1494 the numerator is determined by multiplying such net gains by a  
1495 fraction the numerator of which is the amount included in the  
1496 numerator of the receipts factor pursuant to subsection (5) of  
1497 this section and the denominator of which is the total amount of  
1498 interest and fees or penalties in the nature of interest from  
1499 loans not secured by real property.

1500 (7) The numerator of the receipts factor includes interest  
1501 and fees or penalties in the nature of interest from credit card

1502 receivables and receipts from fees charged to card holders, such  
1503 as annual fees, if the billing address of the card holder is in  
1504 this state.

1505 (8) The numerator of the receipts factor includes net gains  
1506 (but not less than zero) from the sale of credit card receivables  
1507 multiplied by a fraction, the numerator of which is the amount  
1508 included in the numerator of the receipts factor pursuant to  
1509 subsection (7) of this section and the denominator of which is the  
1510 taxpayer's total amount of interest and fees or penalties in the  
1511 nature of interest from credit card receivables and fees charged  
1512 to card holders.

1513 (9) The numerator of the receipts factor includes all credit  
1514 card issuer's reimbursement fees multiplied by a fraction, the  
1515 numerator of which is the amount included in the numerator of the  
1516 receipts factor pursuant to subsection (7) of this section and the  
1517 denominator of which is the taxpayer's total amount of interest  
1518 and fees or penalties in the nature of interest from credit card  
1519 receivables and fees charged to card holders.

1520 (10) The numerator of the receipts factor includes receipts  
1521 from merchant discount if the commercial domicile of the merchant  
1522 is in this state. Such receipts shall be computed net of any  
1523 cardholder charge backs, but shall not be reduced by any  
1524 interchange transaction fees or by any issuer's reimbursement fees  
1525 paid to another for charges made by its card holders.

1526 (11) (a) (i) The numerator of the receipts factor includes  
1527 loan servicing fees derived from loans secured by real property  
1528 multiplied by a fraction the numerator of which is the amount  
1529 included in the numerator of the receipts factor pursuant to  
1530 subsection (4) of this section and the denominator of which is the  
1531 total amount of interest and fees or penalties in the nature of  
1532 interest from loans secured by real property.

1533 (ii) The numerator of the receipts factor includes  
1534 loan servicing fees derived from loans not secured by real

1535 property multiplied by a fraction the numerator of which is the  
1536 amount included in the numerator of the receipts factor pursuant  
1537 to subsection (5) of this section and the denominator of which is  
1538 the total amount of interest and fees or penalties in the nature  
1539 of interest and fees or penalties in the nature of interest from  
1540 loans not secured by real property.

1541 (b) In circumstances in which the taxpayer receives  
1542 loan servicing fees for servicing either the secured or the  
1543 unsecured loans of another, the numerator of the receipts factor  
1544 shall include such fees if the borrower is located in this state.

1545 (12) The numerator of the receipts factor includes receipts  
1546 from services not otherwise apportioned under this section if the  
1547 service is performed in this state. If the service is performed  
1548 both within and without this state, the numerator of the receipts  
1549 factor includes receipts from services not otherwise apportioned  
1550 under this section, if a greater proportion of the income  
1551 producing activity is performed in this state based on cost of  
1552 performance.

1553 (13) (a) Interest, dividends, net gains (but not less than  
1554 zero) and other income from investment assets and activities and  
1555 from trading assets and activities shall be included in the  
1556 receipts factor. Investment assets and activities and trading  
1557 assets and activities include but are not limited to: investment  
1558 securities; trading account assets; federal funds; securities  
1559 purchased and sold under agreements to resell or repurchase;  
1560 options; future contracts; forward contracts; notional principal  
1561 contracts such as swaps; equities; and foreign currency  
1562 transactions. With respect to the investment and trading assets  
1563 and activities described in subparagraphs (i) and (ii) of this  
1564 paragraph (a), the receipts factor shall include the amounts  
1565 described in such subparagraphs.

1566 (i) The receipts factor shall include the amount  
1567 by which interest from federal funds sold and securities purchased



1568 under resale agreements exceeds interest expenses on federal funds  
1569 purchased and securities sold under repurchase agreements.

1570 (ii) The receipts factor shall include the amount  
1571 by which interest, dividends, gains and other income from trading  
1572 assets and activities, including but not limited to assets and  
1573 activities in the matched book, in the arbitrage book, and foreign  
1574 currency transactions, exceed amounts paid in lieu of interest,  
1575 amounts paid in lieu of dividends, and losses from such assets and  
1576 activities.

1577 (b) The numerator of the receipts factor includes  
1578 interest, dividends, net gains (but not less than zero) and other  
1579 income from investment assets and activities and from trading  
1580 assets and activities described in paragraph (a) of this  
1581 subsection that are attributable to this state.

1582 (i) The amount of interest, dividends, net gains  
1583 (but not less than zero) and other income from investment assets  
1584 and activities in the investment account to be attributed to this  
1585 state and included in the numerator is determined by multiplying  
1586 all such income from such assets and activities by a fraction, the  
1587 numerator of which is average value of such assets which are  
1588 properly assigned to a regular place of business of the taxpayer  
1589 within this state and the denominator of which is the average  
1590 value of all such assets.

1591 (ii) The amount of interest from federal funds  
1592 sold and purchased and from securities purchased under resale  
1593 agreements and securities sold under repurchase agreements  
1594 attributable to this state and included in the numerator is  
1595 determined by multiplying the amount described in subparagraph (i)  
1596 of paragraph (a) of this subsection (13) from such funds and such  
1597 securities by a fraction, the numerator of which is the average  
1598 value of federal funds sold and securities purchased under  
1599 agreements to resell which are properly assigned to a regular  
1600 place of business of the taxpayer within this state and the

1601 denominator of which is the average value of all such funds and  
1602 such securities.

1603                   (iii) The amount of interest, dividends, gains and  
1604 other income from trading assets and activities, including but not  
1605 limited to assets and activities in the matched book, in the  
1606 arbitrage book and foreign currency transactions, (but excluding  
1607 amounts described in subparagraphs (i) or (ii) of this paragraph),  
1608 attributable to this state and included in the numerator is  
1609 determined by multiplying the amount described in subparagraph  
1610 (ii) of paragraph (a) of this subsection (13) by a fraction, the  
1611 numerator of which is the average value of such trading assets  
1612 which are properly assigned to a regular place of business of the  
1613 taxpayer within this state and the denominator of which is the  
1614 average value of all such assets.

1615                   (iv) For purposes of this paragraph, average value  
1616 shall be determined using the rules for determining the average  
1617 value of tangible personal property set forth in subsections (3)  
1618 and (4) of Section 27-7-24.5.

1619                   (c) In lieu of using the method set forth in paragraph  
1620 (b) of this subsection (13), the taxpayer may elect, or the  
1621 commissioner may require in order to fairly represent the business  
1622 activity of the taxpayer in this state, the use of the method set  
1623 forth in this paragraph (c).

1624                   (i) The amount of interest, dividends, net gains  
1625 (but not less than zero) and other income from investment assets  
1626 and activities in the investment account to be attributed to this  
1627 state and included in the numerator is determined by multiplying  
1628 all such income from such assets and activities by a fraction, the  
1629 numerator of which is the gross income from such assets and  
1630 activities which are properly assigned to a regular place of  
1631 business of the taxpayer within the state and the denominator of  
1632 which is the gross income from all such assets and activities.

1633                   (ii) The amount of interest from federal funds  
1634 sold and purchased and from securities purchased under resale  
1635 agreements and securities sold under repurchase agreements  
1636 attributable to this state and included in the numerator is  
1637 determined by multiplying the amount described in subparagraph (i)  
1638 of paragraph (a) of this subsection (13) from such funds and such  
1639 securities by a fraction, the numerator of which is the gross  
1640 income from such funds and such securities which are property  
1641 assigned to a regular place of business and the taxpayer within  
1642 this state and the denominator of which is the gross income from  
1643 all such funds and such securities.

1644                   (iii) The amount of interest, dividends, gains and  
1645 other income from trading assets and activities, including but not  
1646 limited to assets and activities in the matched book, in the  
1647 arbitrage book and foreign currency transactions, but not  
1648 excluding amounts described in subparagraphs (i) or (ii) of this  
1649 paragraph (c), attributable to this state and included in the  
1650 numerator is determined by multiplying the amount described in  
1651 subparagraph (ii) of paragraph (a) of this subsection (13) by a  
1652 fraction, the numerator of which is the gross income from such  
1653 trading assets and activities which are properly assigned to a  
1654 regular place of business of the taxpayer within this state and  
1655 the denominator of which is the gross income from all such assets  
1656 and activities.

1657                   (d) If the taxpayer elects or is required by the  
1658 commissioner to use the method set forth in paragraph (c) of this  
1659 subsection (13), it shall use this method on all subsequent  
1660 returns unless the taxpayer receives prior permission from the  
1661 commissioner to use, or the commissioner requires a different  
1662 method.

1663                   (e) The taxpayer shall have the burden of proving that  
1664 an investment asset or activity or trading asset or activity was  
1665 properly assigned to a regular place of business outside of this

1666 state by demonstrating that the day-to-day decisions regarding the  
1667 assets or activity occurred at a regular place of business outside  
1668 this state. Where the day-to-day decisions regarding an  
1669 investment asset or activity or trading asset or activity occur at  
1670 more than one (1) regular place of business and one (1) such  
1671 regular place of business is in this state and one (1) such  
1672 regular place of business outside this state, such asset or  
1673 activity shall be considered to be located at the regular place of  
1674 business of the taxpayer where the investment or trading policies  
1675 or guidelines with respect to the asset or activity are  
1676 established. Unless the taxpayer demonstrates to the contrary,  
1677 such policies and guidelines shall be presumed to be established  
1678 at the commercial domicile of the taxpayer.

1679 (14) The numerator of the receipts factor includes all other  
1680 receipts pursuant to the rules adopted by the commission.

1681 (15) All receipts which would be assigned under this section  
1682 to a state in which the taxpayer is not taxable shall be included  
1683 in the numerator of the receipts factor, if the taxpayer's  
1684 commercial domicile is in this state.

1685 SECTION 6. Section 27-8-3, Mississippi Code of 1972, is  
1686 amended as follows:

1687 27-8-3. (1) For purposes of this chapter, the following  
1688 terms shall have meanings ascribed below:

1689 (a) "C corporation" means a corporation which is not an  
1690 S corporation.

1691 (b) "Code" means the Internal Revenue Code of 1986, as  
1692 amended and as applicable to the taxable period; references to  
1693 sections of the Code shall be deemed to refer to corresponding  
1694 provisions of prior and subsequent federal tax laws.

1695 (c) "Income attributable to the state" means items of  
1696 income, loss, deduction or credit of the S corporation apportioned  
1697 to this state under Section 27-7-23(c)(2) or allocated to this  
1698 state under Section 27-7-23(c)(3).

1699           (d) "Income not attributable to the state" means all  
1700 items of income, loss, deduction or credit of the S corporation  
1701 other than income attributable to the state.

1702           (e) "Post-termination transition period" means that  
1703 period defined in Section 1377(b)(1) of the Code.

1704           (f) "Pro rata share" means the portion of any item  
1705 attributable to an S corporation shareholder for a taxable period  
1706 determined in the manner provided in, and subject to any election  
1707 made under, Section 1377(a) or 1362(e), as the case may be, of the  
1708 Code.

1709           (g) "S corporation" means a corporation for which a  
1710 valid election under Section 1362(a) of the Code is in effect.

1711           (h) "Taxable period" means any taxable year or portion  
1712 of a taxable year during which a corporation is an S corporation.

1713           (2) Except as otherwise expressly provided or clearly  
1714 appearing from the context, any term used in this chapter shall  
1715 have the same meaning as when used in a comparable context in the  
1716 Code, or in any statute relating to federal income taxes, in  
1717 effect for the taxable period. Due consideration shall be given  
1718 in the interpretation of this chapter to applicable sections of  
1719 the Code in effect from time to time and to federal rulings and  
1720 regulations interpreting such sections, provided such Code,  
1721 rulings and regulations do not conflict with the provisions of  
1722 this chapter.

1723           SECTION 7. Section 27-13-13, Mississippi Code of 1972, is  
1724 amended as follows:

1725           27-13-13. (1) In the case of organizations doing business  
1726 both within and without Mississippi, the value of the capital  
1727 employed in this state shall be determined by first computing the  
1728 ratio between (1) the real and tangible personal property owned in  
1729 Mississippi and gross receipts from business carried on in  
1730 Mississippi, and (2) the total real and tangible personal property  
1731 owned and gross receipts wherever located and from wherever

1732 received. Said ratio then shall be applied to the total capital  
1733 stock, surplus, undivided profits and true reserves and the result  
1734 of that application shall be the capital employed in this state.  
1735 Provided, however, that the amount of the determined capital in  
1736 Mississippi shall in no case be less than the assessed value of  
1737 the Mississippi property of the organization for the year  
1738 preceding the year in which the return is due.

1739 (2) (a) For the purpose of this section, for tax returns  
1740 for tax years ending before January 1, 1999, an organization which  
1741 uses a formula method of apportionment in making income tax  
1742 returns to this state shall determine its gross receipts from  
1743 business carried on in Mississippi by applying to total unitary  
1744 receipts the ratio achieved, or which would be achieved, by such  
1745 formula and adding to the result of such application any  
1746 nonunitary Mississippi receipts.

1747 (b) For the purpose of this section, for tax returns  
1748 for tax years ending on or after January 1, 1999, the gross  
1749 receipts of an organization that is required to use a formula  
1750 method of apportionment in making income tax returns to this state  
1751 shall be the same (both as to gross receipts from business carried  
1752 on in Mississippi and gross receipts wherever located) as the  
1753 gross receipts (or sales) used for the receipts or sales factor in  
1754 the applicable income tax formula. However, gross receipts from  
1755 business carried on in Mississippi, for the purposes of this  
1756 section, shall also include any receipts from the taxpayer's  
1757 business operations which are not apportioned but rather are  
1758 directly allocated or assigned to this state. If the taxpayer is  
1759 required to use a formula method of apportionment in making income  
1760 tax returns which does not have a receipts or sales factor, then  
1761 the receipts factor for the franchise tax formula shall be  
1762 determined by regulation of the commission.

1763 (c) For purposes of this section, for tax returns for  
1764 tax years ending on or after December 31, 2001, the ratio

1765 described in subsection (1) of this section shall include all  
1766 gross receipts as specified in paragraph (b) of this subsection  
1767 and where a taxpayer owns a direct or indirect interest in a  
1768 flow-through entity, the taxpayer shall include in the ratio its  
1769 portion of the flow-through entity's (i) real and tangible  
1770 personal property owned in Mississippi and gross receipts from  
1771 business carried on in Mississippi, and (ii) total real and  
1772 tangible property owned and gross receipts wherever located and  
1773 from wherever received. The taxpayer shall include its portion of  
1774 the flow-through entity's assessed value of Mississippi property  
1775 when determining its assessed value of Mississippi property. A  
1776 flow-through entity's real property, tangible personal property,  
1777 gross receipts and assessed value of property shall include its  
1778 portion of these same items of any flow-through entity in which it  
1779 owns a direct or indirect interest. For purposes of this section,  
1780 flow-through entity is every form of organization other than a  
1781 corporation, association or joint stock company or other  
1782 organization which would qualify for exemption under Section  
1783 27-13-63 if the organization were a corporation, association or  
1784 joint stock company.

1785 SECTION 8. This act shall apply to taxable years beginning  
1786 on or after January 1, 2001.

1787 SECTION 9. This act shall take effect and be in force from  
1788 and after January 1, 2001.