

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

To: Ways and Means

HOUSE BILL NO. 1695
(As Sent to Governor)

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

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

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

33 **[Through June 30, 2003, this section shall read as follows:]**

34 27-7-9. (a) Except as provided in Sections 27-7-95 through
35 27-7-103, determination of amount of gain or loss.

36 (1) Computation of gain or loss. The gain from the
37 sale or other disposition of property shall be the excess of the
38 amount realized therefrom over the adjusted basis provided in

39 subsection (c) for determining gain, and the loss shall be the
40 excess of the adjusted basis provided in subsection (c) for
41 determining loss over the amount realized.

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

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

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

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

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

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

67 (d) Basis of property.

68 (1) Property acquired after March 16, 1912. The basis
69 for ascertaining the gain derived or the loss sustained from the
70 sale or other disposition of property, real, personal or mixed,
71 shall be, in the case of property acquired after March 16, 1912,

72 the cost of such property, except as otherwise provided in this
73 subsection.

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

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

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

105 the trust, the basis of such property in the hands of the persons
106 entitled under the terms of the trust instrument to the property
107 after the grantor's death shall, after such death, be the same as
108 if the trust instrument had been a will executed on the day of the
109 grantor's death.

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

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

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

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

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

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

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

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

167 In determining the fair market value of stock in a
168 corporation as of March 16, 1912, due regard shall be given to the

169 fair market value of the assets of the corporation as of that
170 date.

171 (e) Adjustments to basis.

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

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

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

200 (1) Exchange solely in kind.

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

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

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

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

231 (2) Gain from exchanges not solely in kind. If an
232 exchange would be within the provisions of subsection (f)(1) of
233 this section, if it were not for the fact that the property

234 received in exchange consists not only of property permitted by
235 subsection (f)(1) to be received without the recognition of gain,
236 but also of other property or money, then the gain, if any, to the
237 recipient shall be recognized, but in an amount not in excess of
238 the sum of such money and the fair market value of such other
239 property so received.

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

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

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

265 (6) Involuntary conversions. If property, as a result
266 of its destruction in whole or in part, theft, seizure or

267 requisition or condemnation, or threat or imminence thereof, is
268 compulsorily or involuntarily converted:

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

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

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

300 such property at least three (3) years prior to the date of
301 disposition.

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

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

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

316 (10) Sales of certain interests in financial
317 institutions domiciled in Mississippi, domestic corporations,
318 domestic limited partnerships or domestic limited liability
319 companies.

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

330 (B) No gain shall be recognized from the sale of
331 all or at least ninety percent (90%) of the assets in domestic

332 corporations except those assets that represent the ownership
333 interest of another entity provided:

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

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

340 (iii) The depreciation and/or amortization
341 that has been taken on the assets of the corporation shall be
342 recaptured and taxed as ordinary income in the same manner as
343 provided for in Section 1245 of the Internal Revenue Code, as
344 amended, and any corresponding regulations relating to Section
345 1245 property. All depreciation and/or amortization shall be
346 recaptured up to cost prior to any nonrecognition of gains.

347 (g) Reorganization defined. The term "reorganization"
348 means:

349 (1) A statutory merger or consolidation;

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

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

363 (4) A recapitalization; or

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

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

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

376 (j) Special rules.

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

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

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

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

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

423 (6) For state tax purposes, a corporation or other
424 legal entity is considered separate from its shareholders,
425 affiliated corporations or other entities. If a corporation or
426 other legal entity enters into any transaction that is for the
427 benefit of its shareholders or for the benefit of an affiliated
428 corporation without an equal mutual business benefit of the

429 corporation, then, the transaction will be adjusted or eliminated
430 to arrive at taxable income to this state. All transactions
431 entered into by a corporation must be at "arms-length." If
432 requested by the commissioner, the taxpayer must be able to
433 substantiate that the transaction occurred at "arms-length." If
434 not, the transaction may be adjusted to the satisfaction of the
435 commissioner. In determining whether the transaction occurred at
436 arms-length, the commissioner shall consider the following:

437 (A) Whether the transaction is in compliance with
438 the federal regulations promulgated under Internal Revenue Code
439 Section 482;

440 (B) Whether the transaction was done for a valid
441 business purpose;

442 (C) Whether the income being shifted by the
443 transaction is subject to a tax in another state;

444 (D) Whether the transaction is consistent with the
445 results that would have been realized if uncontrolled taxpayers
446 had engaged in the same transaction under the same circumstances;
447 and

448 (E) Other factors which support the conclusion
449 that income is being shifted to avoid the tax imposed by this
450 chapter.

451 (k) Sale or exchange of residence.

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

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

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

463 (1) Distributions by corporations.

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

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

487 (3) Distributions in liquidation. Amounts distributed
488 in complete liquidation of a corporation shall be treated as in
489 full payment in exchange for the stock, and amounts distributed in
490 partial liquidation of a corporation shall be treated as in part
491 or full payment in exchange for the stock. The gain or loss to
492 the distributee resulting from such exchange shall be determined

493 under subsection (a), but shall be recognized only to the extent
494 provided in subsection (f). In the case of amounts distributed in
495 partial liquidation, the part of such distribution which is
496 property chargeable to capital account shall not be considered a
497 distribution of earnings or profits within the meaning of
498 paragraph (2) of this subsection for the purpose of determining
499 the taxability of subsequent distributions by the corporations.

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

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

510 (6) Cancellation or redemption of stock. If a
511 corporation cancels or redeems its stock (whether or not such
512 stock was issued as a stock dividend) at such time and in such
513 manner as to make the distribution and cancellation or redemption
514 in whole or in part essentially equivalent to the distribution of
515 a taxable dividend, the amount so distributed in redemption or
516 cancellation of the stock, to the extent that it represents a
517 distribution of earnings or profits accumulated after March 16,
518 1912, shall be treated as a taxable dividend.

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

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

535 [From and after July 1, 2003, this section shall read as
536 follows:]

537 27-7-9. (a) Except as provided in Sections 27-7-95 through
538 27-7-103, determination of amount of gain or loss.

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

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

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

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

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

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

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

570 (d) Basis of property.

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

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

580 (3) Property acquired by gift. In the case of property
581 acquired by gift after January 1, 1936, the basis shall be the
582 same as that which it would have in the hands of the donor or the
583 last preceding owner by whom it was not acquired by gift. If the
584 facts necessary to determine such basis are unknown to the donee,
585 the commissioner shall, if possible, obtain such facts from such
586 donor, or last preceding owner, or any other person cognizant
587 thereof. If the commissioner finds it impossible to obtain such
588 facts, the commissioner shall establish a basis for the property
589 from the best information available. In the case of property
590 acquired by gift on or before January 1, 1936, the basis for

591 ascertaining gain or loss from the sale or other disposition
592 thereof shall be the fair market price or value of such property
593 at the time of acquisition.

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

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

619 (6) Property acquired in tax-free exchanges. If the
620 property was acquired upon an exchange described in subsection
621 (f), the basis shall be the same as in the case of the property
622 exchanged, decreased in the amount of any money received by the
623 taxpayer and increased in the amount of gain or decreased in the

624 amount of loss to the taxpayer that was recognized upon such
625 exchange by the terms of this act. If the property so acquired
626 consisted in part of the type of property permitted by subsection
627 (f) to be received without recognition of gain or loss, and in
628 part of other property, the basis provided in this subsection
629 shall be allocated between the properties (other than money)
630 received, and for the purpose of the allocation there shall be
631 assigned to such other property an amount equivalent to its fair
632 market value at the date of the exchange.

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

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

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

657 shall be increased in the amount of the difference, or if the
658 repurchase price was less than the sales price, such basis shall
659 be decreased in the amount of the difference.

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

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

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

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

674 (e) Adjustments to basis.

675 (1) In general. In computing the amount of gain or
676 loss from the sale or other disposition of property, proper
677 adjustment shall be made for any expenditure, receipt, loss or
678 other item, properly chargeable to capital account since the basis
679 date. The cost or other basis of the property shall also be
680 diminished by the amount of the deductions for exhaustion, wear
681 and tear, obsolescence, amortization, and depletion, which have
682 since the acquisition of the property been allowable in respect of
683 such property whether or not such deductions were claimed by the
684 taxpayer or formerly allowed. In the case of stock, the basis
685 shall be diminished by the amount of distributions previously made
686 in respect to such stock, to the extent provided under this
687 section.

688 (2) Substituted basis. Whenever it appears that the
689 basis of the property in the hands of a taxpayer is a substituted

690 basis, then the adjustments provided in subsection (e)(1) shall be
691 made after first making in respect of such substituted basis
692 proper adjustments of a similar nature in respect of the period
693 during which the property was held by the transferor, donor or
694 grantor, or during which the other property was held by the person
695 for whom the basis is to be determined. The term "substituted
696 basis" as used in this subsection means a basis determined under
697 any provision of this section or under any corresponding provision
698 of a prior Income Tax Law, providing that the basis shall be
699 determined by reference to the basis in the hands of a transferor,
700 donor or grantor, or, by reference to other property held at any
701 time by the person for whom the basis is to be determined.

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

703 (1) Exchange solely in kind.

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

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

718 (C) Transfers to corporation controlled by
719 transferor. No gain or loss shall be recognized if property is
720 transferred to a corporation by one or more persons solely in
721 exchange for stock or securities in such corporation, and if
722 immediately after the exchange such person or persons are in

723 control of the corporation; but in the case of an exchange by two
724 (2) or more persons, this subsection shall apply only if the
725 amount of the stock and securities received by each is
726 substantially in proportion to his interest in the property prior
727 to the exchange.

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

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

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

750 (4) Distribution of stock on reorganization. If in
751 pursuance of a plan of reorganization, there is distributed to a
752 shareholder in a corporation, a party to the reorganization, stock
753 or securities in such corporation or in another corporation, a
754 party to the reorganization, without the surrender by such
755 shareholder of stock or securities in such corporation, no gain to

756 the distributee from the receipt of such stock or securities shall
757 be recognized.

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

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

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

775 (B) Into money, no gain shall be recognized if
776 such money is expended, within a period ending two (2) years after
777 the close of the first taxable year in which any part of the gain
778 upon the conversion is realized, in the acquisition of other
779 property similar or related in service or use to the property so
780 converted, or in the acquisition of control of a corporation
781 owning such other property, or in the establishment of a
782 replacement fund, but loss shall be recognized. If any part of
783 the money is not so expended, the gain shall be recognized to the
784 extent of the money which is not so expended, regardless of
785 whether such money is received in one or more taxable years and
786 regardless of whether or not the money which is not so expended
787 constitutes gain. Provided, gain realized on property which is
788 compulsorily or involuntarily converted for public use under Title

789 II, Chapter 27, Mississippi Code of 1972, or any federal law
790 relating to the involuntary conversion of property for public use
791 shall not be recognized. Provided further, that gain realized on
792 property which is voluntarily converted for public use shall not
793 be recognized after it becomes evident that eminent domain
794 proceedings are probable.

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

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

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

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

819 (10) Sales of certain interests in financial
820 institutions domiciled in Mississippi, domestic corporations,

821 domestic limited partnerships or domestic limited liability
822 companies.

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

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

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

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

843 (iii) The depreciation and/or amortization
844 that has been taken on the assets of the corporation shall be
845 recaptured and taxed as ordinary income in the same manner as
846 provided for in Section 1245 of the Internal Revenue Code, as
847 amended, and any corresponding regulations relating to Section
848 1245 property. All depreciation and/or amortization shall be
849 recaptured up to cost prior to any nonrecognition of gains.

850 (g) Reorganization defined. The term "reorganization"
851 means:

852 (1) A statutory merger or consolidation;

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

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

866 (4) A recapitalization; or

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

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

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

879 (j) Special rules.

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

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

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

905 (4) Notwithstanding the other provisions of this
906 section, a corporation or other entity that is involved in
907 restructuring, reorganizing, distributing assets or profits, or
908 changing ownership that results in an adjustment to its asset
909 basis is required to report a gain in the year such transaction
910 occurs on any such transaction when the transaction involves
911 assets owned or used in this state, or otherwise represents assets
912 owned or used in this state. If a transfer of income or a change
913 in asset valuation occurs on the tax records of the taxpayer, such
914 transaction shall result in taxation to this state to the extent
915 of the transfer of income or change in asset valuation.

916 (5) If a corporation or other entity makes an Internal
917 Revenue Code Section 338 election, or other similar election under
918 which the aggregate basis in assets are increased on the tax

919 records of the taxpayer, then a similar election must also be made
920 for Mississippi purposes, but the gain must be recognized by the
921 corporation in which the increase in basis of the assets occurs.
922 The corporation or other entity is allowed to increase its basis
923 by the amount of gain recognized. An aggregate write-down of
924 assets is not allowed. The parent corporation shall recognize the
925 gain on the disposition of its stock.

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

941 (k) Sale or exchange of residence.

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

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

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

953 (1) Distributions by corporations.

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

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

977 (3) Distributions in liquidation. Amounts distributed
978 in complete liquidation of a corporation shall be treated as in
979 full payment in exchange for the stock, and amounts distributed in
980 partial liquidation of a corporation shall be treated as in part
981 or full payment in exchange for the stock. The gain or loss to
982 the distributee resulting from such exchange shall be determined

983 under subsection (a), but shall be recognized only to the extent
984 provided in subsection (f). In the case of amounts distributed in
985 partial liquidation, the part of such distribution which is
986 property chargeable to capital account shall not be considered a
987 distribution of earnings or profits within the meaning of
988 paragraph (2) of this subsection for the purpose of determining
989 the taxability of subsequent distributions by the corporations.

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

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

1000 (6) Cancellation or redemption of stock. If a
1001 corporation cancels or redeems its stock (whether or not such
1002 stock was issued as a stock dividend) at such time and in such
1003 manner as to make the distribution and cancellation or redemption
1004 in whole or in part essentially equivalent to the distribution of
1005 a taxable dividend, the amount so distributed in redemption or
1006 cancellation of the stock, to the extent that it represents a
1007 distribution of earnings or profits accumulated after March 16,
1008 1912, shall be treated as a taxable dividend.

1009 (7) "Amounts distributed in partial liquidation"
1010 defined. As used in this subsection, the term "amounts
1011 distributed in partial liquidation" means distribution by a
1012 corporation in complete cancellation or redemption of a part of
1013 its stock, or one of a series of distributions in complete
1014 cancellation or redemption of all or a portion of its stock.

1015 (8) Distributions of stock pursuant to order enforcing
1016 the Antitrust Laws. Any distribution of stock which is made
1017 pursuant to the order of any court enforcing the Antitrust Laws of
1018 the United States, or of any state, shall be a distribution which
1019 is not out of earnings and profits of the distributing
1020 corporation, but the value of the stock so distributed shall be
1021 applied against and reduce the basis of the stock of the
1022 distributing corporation provided in subsection (d), and if in
1023 excess of such basis, such excess shall be taxable in the same
1024 manner as a gain from the sale or exchange of property.

1025 SECTION 2. Section 27-7-15, Mississippi Code of 1972, is
1026 amended as follows:

1027 **[Through June 30, 2003, this section shall read as follows:]**

1028 27-7-15. (1) For the purposes of this article, except as
1029 otherwise provided, the term "gross income" means and includes the
1030 income of a taxpayer derived from salaries, wages, fees or
1031 compensation for service, of whatever kind and in whatever form
1032 paid, including income from governmental agencies and subdivisions
1033 thereof; or from professions, vocations, trades, businesses,
1034 commerce or sales, or renting or dealing in property, or
1035 reacquired property; also from annuities, interest, rents,
1036 dividends, securities, insurance premiums, reinsurance premiums,
1037 considerations for supplemental insurance contracts, or the
1038 transaction of any business carried on for gain or profit, or
1039 gains, or profits, and income derived from any source whatever and
1040 in whatever form paid. The amount of all such items of income
1041 shall be included in the gross income for the taxable year in
1042 which received by the taxpayer. The amount by which an eligible
1043 employee's salary is reduced pursuant to a salary reduction
1044 agreement authorized under Section 25-17-5 shall be excluded from
1045 the term "gross income" within the meaning of this article.

1046 (2) In determining gross income for the purpose of this
1047 section, the following, under regulations prescribed by the
1048 commissioner, shall be applicable:

1049 (a) Dealers in property. Federal rules, regulations
1050 and revenue procedures shall be followed with respect to
1051 installment sales unless a transaction results in the shifting of
1052 income from inside the state to outside the state.

1053 (b) Casual sales of property. * * *

1054 (i) Prior to January 1, 2001, federal rules,
1055 regulations and revenue procedures shall be followed with respect
1056 to installment sales except they shall be applied and administered
1057 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the
1058 106th Congress had not been enacted. This provision will
1059 generally affect taxpayers, reporting on the accrual method of
1060 accounting, entering into installment note agreements on or after
1061 December 17, 1999. Any gain or profit resulting from the casual
1062 sale of property will be recognized in the year of sale.

1063 (ii) From and after January 1, 2001, federal
1064 rules, regulations and revenue procedures shall be followed with
1065 respect to installment sales except as provided in this
1066 subparagraph (ii). Gain or profit from the casual sale of
1067 property shall be recognized in the year of sale. When a taxpayer
1068 recognizes gain on the casual sale of property in which the gain
1069 is deferred for federal income tax purposes, a taxpayer may elect
1070 to defer the payment of tax resulting from the gain as allowed and
1071 to the extent provided under regulations prescribed by the
1072 commissioner. If the payment of the tax is made on a deferred
1073 basis, the tax shall be computed based on the applicable rate for
1074 the income reported in the year the payment is made. Except as
1075 otherwise provided in subparagraph (iii) of this paragraph (b),
1076 deferring the payment of the tax shall not affect the liability
1077 for the tax. If at any time the installment note is sold,
1078 contributed, transferred or disposed of in any manner and for any

1079 purpose by the original note holder, or the original note holder
1080 is merged, liquidated, dissolved or withdrawn from this state,
1081 then all deferred tax payments under this section shall
1082 immediately become due and payable.

1083 (iii) If the selling price of the property is
1084 reduced by any alteration in the terms of an installment note,
1085 including default by the purchaser, the gain to be recognized is
1086 recomputed based on the adjusted selling price in the same manner
1087 as for federal income tax purposes. The tax on this amount, less
1088 the previously paid tax on the recognized gain, is payable over
1089 the period of the remaining installments. If the tax on the
1090 previously recognized gain has been paid in full to this state,
1091 the return on which the payment was made may be amended for this
1092 purpose only. The statute of limitations in Section 27-7-49 shall
1093 not bar an amended return for this purpose.

1094 (c) Reserves of insurance companies. In the case of
1095 insurance companies, any amounts in excess of the legally required
1096 reserves shall be included as gross income.

1097 (d) Affiliated companies or persons. As regards sales,
1098 exchanges or payments for services from one to another of
1099 affiliated companies or persons or under other circumstances where
1100 the relation between the buyer and seller is such that gross
1101 proceeds from the sale or the value of the exchange or the payment
1102 for services are not indicative of the true value of the subject
1103 matter of the sale, exchange or payment for services, the
1104 commissioner shall prescribe uniform and equitable rules for
1105 determining the true value of the gross income, gross sales,
1106 exchanges or payment for services, or require consolidated returns
1107 of affiliates.

1108 (e) Alimony and separate maintenance payments. The
1109 federal rules, regulations and revenue procedures in determining
1110 the deductibility and taxability of alimony payments shall be
1111 followed in this state.

1112 (f) Reimbursement for expenses of moving. There shall
1113 be included in gross income (as compensation for services) any
1114 amount received or accrued, directly or indirectly, by an
1115 individual as a payment for or reimbursement of expenses of moving
1116 from one residence to another residence which is attributable to
1117 employment or self-employment.

1118 (3) In the case of taxpayers other than residents, gross
1119 income includes gross income from sources within this state.

1120 (4) The words "gross income" do not include the following
1121 items of income which shall be exempt from taxation under this
1122 article:

1123 (a) The proceeds of life insurance policies and
1124 contracts paid upon the death of the insured. However, the income
1125 from the proceeds of such policies or contracts shall be included
1126 in the gross income.

1127 (b) The amount received by the insured as a return of
1128 premium or premiums paid by him under life insurance policies,
1129 endowment, or annuity contracts, either during the term or at
1130 maturity or upon surrender of the contract.

1131 (c) The value of property acquired by gift, bequest,
1132 devise or descent, but the income from such property shall be
1133 included in the gross income.

1134 (d) Interest upon the obligations of the United States
1135 or its possessions, or securities issued under the provisions of
1136 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the
1137 War Finance Corporation, or obligations of the State of
1138 Mississippi or political subdivisions thereof.

1139 (e) The amounts received through accident or health
1140 insurance as compensation for personal injuries or sickness, plus
1141 the amount of any damages received for such injuries or such
1142 sickness or injuries, or through the War Risk Insurance Act, or
1143 any law for the benefit or relief of injured or disabled members
1144 of the military or naval forces of the United States.

1145 (f) Income received by any religious denomination or by
1146 any institution or trust for moral or mental improvements,
1147 religious, Bible, tract, charitable, benevolent, fraternal,
1148 missionary, hospital, infirmary, educational, scientific,
1149 literary, library, patriotic, historical or cemetery purposes or
1150 for two (2) or more of such purposes, if such income be used
1151 exclusively for carrying out one or more of such purposes.

1152 (g) Income received by a domestic corporation which is
1153 "taxable in another state" as this term is defined in this
1154 article, derived from business activity conducted outside this
1155 state. Domestic corporations taxable both within and without the
1156 state shall determine Mississippi income on the same basis as
1157 provided for foreign corporations under the provisions of this
1158 article.

1159 (h) In case of insurance companies, there shall be
1160 excluded from gross income such portion of actual premiums
1161 received from an individual policyholder as is paid back or
1162 credited to or treated as an abatement of premiums of such
1163 policyholder within the taxable year.

1164 (i) Income from dividends that has already borne a tax
1165 as dividend income under the provisions of this article, when such
1166 dividends may be specifically identified in the possession of the
1167 recipient.

1168 (j) Amounts paid by the United States to a person as
1169 added compensation for hazardous duty pay as a member of the Armed
1170 Forces of the United States in a combat zone designated by
1171 Executive Order of the President of the United States.

1172 (k) Amounts received as retirement allowances,
1173 pensions, annuities or optional retirement allowances paid under
1174 the federal Social Security Act, the Railroad Retirement Act, the
1175 Federal Civil Service Retirement Act, or any other retirement
1176 system of the United States government, retirement allowances paid
1177 under the Mississippi Public Employees' Retirement System,

1178 Mississippi Highway Safety Patrol Retirement System or any other
1179 retirement system of the State of Mississippi or any political
1180 subdivision thereof. The exemption allowed under this paragraph
1181 (k) shall be available to the spouse or other beneficiary at the
1182 death of the primary retiree.

1183 (1) Amounts received as retirement allowances,
1184 pensions, annuities or optional retirement allowances paid by any
1185 public or governmental retirement system not designated in
1186 subsection (k) or any private retirement system or plan of which
1187 the recipient was a member at any time during the period of his
1188 employment. Amounts received as a distribution under a Roth
1189 Individual Retirement Account shall be treated in the same manner
1190 as provided under the Internal Revenue Code of 1986, as amended.
1191 The exemption allowed under this paragraph (1) shall be available
1192 to the spouse or other beneficiary at the death of the primary
1193 retiree.

1194 (m) Compensation not to exceed the aggregate sum of
1195 Five Thousand Dollars (\$5,000.00) for any taxable year received by
1196 a member of the National Guard or Reserve Forces of the United
1197 States as payment for inactive duty training, active duty training
1198 and state active duty.

1199 (n) Compensation received for active service as a
1200 member below the grade of commissioned officer and so much of the
1201 compensation as does not exceed the aggregate sum of Five Hundred
1202 Dollars (\$500.00) per month received for active service as a
1203 commissioned officer in the Armed Forces of the United States for
1204 any month during any part of which such members of the Armed
1205 Forces (i) served in a combat zone as designated by Executive
1206 Order of the President of the United States; or (ii) was
1207 hospitalized as a result of wounds, disease or injury incurred
1208 while serving in such combat zone.

1209 (o) The proceeds received from federal and state
1210 forestry incentives programs.

1211 (p) The amount representing the difference between the
1212 increase of gross income derived from sales for export outside the
1213 United States as compared to the preceding tax year wherein gross
1214 income from export sales was highest, and the net increase in
1215 expenses attributable to such increased exports. In the absence
1216 of direct accounting the ratio of net profits to total sales may
1217 be applied to the increase in export sales. This paragraph (p)
1218 shall only apply to businesses located in this state engaging in
1219 the international export of Mississippi goods and services. Such
1220 goods or services shall have at least fifty percent (50%) of value
1221 added at a location in Mississippi.

1222 (q) Amounts paid by the federal government for the
1223 construction of soil conservation systems as required by a
1224 conservation plan adopted pursuant to 16 USCS 3801 et seq.

1225 (r) The amount deposited in a medical savings account,
1226 and any interest accrued thereon, that is a part of a medical
1227 savings account program as specified in the Medical Savings
1228 Account Act under Sections 71-9-1 through 71-9-9; provided,
1229 however, that any amount withdrawn from such account for purposes
1230 other than paying eligible medical expense or to procure health
1231 coverage, shall be included in gross income.

1232 (s) Amounts paid by the Mississippi Soil and Water
1233 Conservation Commission from the Mississippi Soil and Water
1234 Cost-Share Program for the installation of water quality best
1235 management practices.

1236 (t) Dividends received by a holding corporation, as
1237 defined in Section 27-13-1, from a subsidiary corporation, as
1238 defined in Section 27-13-1.

1239 (u) Interest, dividends, gains or income of any kind on
1240 any account in the Mississippi Affordable College Savings Trust
1241 Fund, as established in Sections 37-155-101 through 37-155-125, to
1242 the extent that such amounts remain on deposit in the MACS Trust

1243 Fund or are withdrawn pursuant to a qualified withdrawal, as
1244 defined in Section 37-155-105.

1245 (v) Interest, dividends or gains accruing on the
1246 payments made pursuant to a prepaid tuition contract, as provided
1247 for in Section 37-155-17.

1248 (w) Income resulting from transactions with a related
1249 member where the related member subject to tax under this chapter
1250 was required to, and did in fact, add back the expense of such
1251 transactions as required by Section 27-7-17(2). Under no
1252 circumstances may the exclusion from income exceed the deduction
1253 add-back of the related member, nor shall the exclusion apply to
1254 any income otherwise excluded under this chapter.

1255 (5) Prisoners of war, missing in action-taxable status.

1256 (a) Members of the Armed Forces. Gross income does not
1257 include compensation received for active service as a member of
1258 the Armed Forces of the United States for any month during any
1259 part of which such member is in a missing status, as defined in
1260 paragraph (d) of this subsection, during the Vietnam Conflict as a
1261 result of such conflict.

1262 (b) Civilian employees. Gross income does not include
1263 compensation received for active service as an employee for any
1264 month during any part of which such employee is in a missing
1265 status during the Vietnam Conflict as a result of such conflict.

1266 (c) Period of conflict. For the purpose of this
1267 subsection, the Vietnam Conflict began February 28, 1961, and ends
1268 on the date designated by the President by Executive Order as the
1269 date of the termination of combatant activities in Vietnam. For
1270 the purpose of this subsection, an individual is in a missing
1271 status as a result of the Vietnam Conflict if immediately before
1272 such status began he was performing service in Vietnam or was
1273 performing service in Southeast Asia in direct support of military
1274 operations in Vietnam. "Southeast Asia" as used in this paragraph

1275 is defined to include Cambodia, Laos, Thailand and waters adjacent
1276 thereto.

1277 (d) "Missing status" means the status of an employee or
1278 member of the Armed Forces who is in active service and is
1279 officially carried or determined to be absent in a status of (i)
1280 missing; (ii) missing in action; (iii) interned in a foreign
1281 country; (iv) captured, beleaguered or besieged by a hostile
1282 force; or (v) detained in a foreign country against his will; but
1283 does not include the status of an employee or member of the Armed
1284 Forces for a period during which he is officially determined to be
1285 absent from his post of duty without authority.

1286 (e) "Active service" means active federal service by an
1287 employee or member of the Armed Forces of the United States in an
1288 active duty status.

1289 (f) "Employee" means one who is a citizen or national
1290 of the United States or an alien admitted to the United States for
1291 permanent residence and is a resident of the State of Mississippi
1292 and is employed in or under a federal executive agency or
1293 department of the Armed Forces.

1294 (g) "Compensation" means (i) basic pay; (ii) special
1295 pay; (iii) incentive pay; (iv) basic allowance for quarters; (v)
1296 basic allowance for subsistence; and (vi) station per diem
1297 allowances for not more than ninety (90) days.

1298 (h) If refund or credit of any overpayment of tax for
1299 any taxable year resulting from the application of subsection (5)
1300 of this section is prevented by the operation of any law or rule
1301 of law, such refund or credit of such overpayment of tax may,
1302 nevertheless, be made or allowed if claim therefor is filed with
1303 the State Tax Commission within three (3) years after the date of
1304 the enactment of this subsection.

1305 (i) The provisions of this subsection shall be
1306 effective for taxable years ending on or after February 28, 1961.

1307 (6) A shareholder of an S corporation, as defined in Section
1308 27-8-3(1)(g), shall take into account the income, loss, deduction
1309 or credit of the S corporation only to the extent provided in
1310 Section 27-8-7(2).

1311 [From and after July 1, 2003, this section shall read as
1312 follows:]

1313 27-7-15. (1) For the purposes of this article, except as
1314 otherwise provided, the term "gross income" means and includes the
1315 income of a taxpayer derived from salaries, wages, fees or
1316 compensation for service, of whatever kind and in whatever form
1317 paid, including income from governmental agencies and subdivisions
1318 thereof; or from professions, vocations, trades, businesses,
1319 commerce or sales, or renting or dealing in property, or
1320 reacquired property; also from annuities, interest, rents,
1321 dividends, securities, insurance premiums, reinsurance premiums,
1322 considerations for supplemental insurance contracts, or the
1323 transaction of any business carried on for gain or profit, or
1324 gains, or profits, and income derived from any source whatever and
1325 in whatever form paid. The amount of all such items of income
1326 shall be included in the gross income for the taxable year in
1327 which received by the taxpayer. The amount by which an eligible
1328 employee's salary is reduced pursuant to a salary reduction
1329 agreement authorized under Section 25-17-5 shall be excluded from
1330 the term "gross income" within the meaning of this article.

1331 (2) In determining gross income for the purpose of this
1332 section, the following, under regulations prescribed by the
1333 commissioner, shall be applicable:

1334 (a) Dealers in property. Federal rules, regulations
1335 and revenue procedures shall be followed with respect to
1336 installment sales.

1337 (b) Casual sales of property. Federal rules,
1338 regulations and revenue procedures shall be followed with respect
1339 to installment sales.

1340 (i) The term "installment sale" means a
1341 disposition of property where at least one (1) payment is to be
1342 received after the close of the taxable year in which the
1343 disposition occurs.

1344 (ii) The term "installment method" means a method
1345 under which the income recognized for any taxable year from the
1346 disposition is that proportion of the payments received in that
1347 year which the gross profit (realized or to be realized when
1348 payment is completed) bears to the total contract price.

1349 (c) Reserves of insurance companies. In the case of
1350 insurance companies, any amounts in excess of the legally required
1351 reserves shall be included as gross income.

1352 (d) Affiliated companies or persons. As regards sales,
1353 exchanges or payments for services from one to another of
1354 affiliated companies or persons or under other circumstances where
1355 the relation between the buyer and seller is such that gross
1356 proceeds from the sale or the value of the exchange or the payment
1357 for services are not indicative of the true value of the subject
1358 matter of the sale, exchange or payment for services, the
1359 commissioner shall prescribe uniform and equitable rules for
1360 determining the true value of the gross income, gross sales,
1361 exchanges or payment for services, or require consolidated returns
1362 of affiliates.

1363 (e) Alimony and separate maintenance payments. The
1364 federal rules, regulations and revenue procedures in determining
1365 the deductibility and taxability of alimony payments shall be
1366 followed in this state.

1367 (f) Reimbursement for expenses of moving. There shall
1368 be included in gross income (as compensation for services) any
1369 amount received or accrued, directly or indirectly, by an
1370 individual as a payment for or reimbursement of expenses of moving
1371 from one residence to another residence which is attributable to
1372 employment or self-employment.

1373 (3) In the case of taxpayers other than residents, gross
1374 income includes gross income from sources within this state.

1375 (4) The words "gross income" do not include the following
1376 items of income which shall be exempt from taxation under this
1377 article:

1378 (a) The proceeds of life insurance policies and
1379 contracts paid upon the death of the insured. However, the income
1380 from the proceeds of such policies or contracts shall be included
1381 in the gross income.

1382 (b) The amount received by the insured as a return of
1383 premium or premiums paid by him under life insurance policies,
1384 endowment, or annuity contracts, either during the term or at
1385 maturity or upon surrender of the contract.

1386 (c) The value of property acquired by gift, bequest,
1387 devise or descent, but the income from such property shall be
1388 included in the gross income.

1389 (d) Interest upon the obligations of the United States
1390 or its possessions, or securities issued under the provisions of
1391 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the
1392 War Finance Corporation, or obligations of the State of
1393 Mississippi or political subdivisions thereof.

1394 (e) The amounts received through accident or health
1395 insurance as compensation for personal injuries or sickness, plus
1396 the amount of any damages received for such injuries or such
1397 sickness or injuries, or through the War Risk Insurance Act, or
1398 any law for the benefit or relief of injured or disabled members
1399 of the military or naval forces of the United States.

1400 (f) Income received by any religious denomination or by
1401 any institution or trust for moral or mental improvements,
1402 religious, Bible, tract, charitable, benevolent, fraternal,
1403 missionary, hospital, infirmary, educational, scientific,
1404 literary, library, patriotic, historical or cemetery purposes or

1405 for two (2) or more of such purposes, if such income be used
1406 exclusively for carrying out one or more of such purposes.

1407 (g) Income received by a domestic corporation which is
1408 "taxable in another state" as this term is defined in this
1409 article, derived from business activity conducted outside this
1410 state. Domestic corporations taxable both within and without the
1411 state shall determine Mississippi income on the same basis as
1412 provided for foreign corporations under the provisions of this
1413 article.

1414 (h) In case of insurance companies, there shall be
1415 excluded from gross income such portion of actual premiums
1416 received from an individual policyholder as is paid back or
1417 credited to or treated as an abatement of premiums of such
1418 policyholder within the taxable year.

1419 (i) Income from dividends that has already borne a tax
1420 as dividend income under the provisions of this article, when such
1421 dividends may be specifically identified in the possession of the
1422 recipient.

1423 (j) Amounts paid by the United States to a person as
1424 added compensation for hazardous duty pay as a member of the Armed
1425 Forces of the United States in a combat zone designated by
1426 Executive Order of the President of the United States.

1427 (k) Amounts received as retirement allowances,
1428 pensions, annuities or optional retirement allowances paid under
1429 the federal Social Security Act, the Railroad Retirement Act, the
1430 Federal Civil Service Retirement Act, or any other retirement
1431 system of the United States government, retirement allowances paid
1432 under the Mississippi Public Employees' Retirement System,
1433 Mississippi Highway Safety Patrol Retirement System or any other
1434 retirement system of the State of Mississippi or any political
1435 subdivision thereof. The exemption allowed under this paragraph
1436 (k) shall be available to the spouse or other beneficiary at the
1437 death of the primary retiree.

1438 (1) Amounts received as retirement allowances,
1439 pensions, annuities or optional retirement allowances paid by any
1440 public or governmental retirement system not designated in
1441 subsection (k) or any private retirement system or plan of which
1442 the recipient was a member at any time during the period of his
1443 employment. Amounts received as a distribution under a Roth
1444 individual retirement account shall be treated in the same manner
1445 as provided under the Internal Revenue Code of 1986, as amended.
1446 The exemption allowed under this paragraph (1) shall be available
1447 to the spouse or other beneficiary at the death of the primary
1448 retiree.

1449 (m) Compensation not to exceed the aggregate sum of
1450 Five Thousand Dollars (\$5,000.00) for any taxable year received by
1451 a member of the National Guard or Reserve Forces of the United
1452 States as payment for inactive duty training, active duty training
1453 and state active duty.

1454 (n) Compensation received for active service as a
1455 member below the grade of commissioned officer and so much of the
1456 compensation as does not exceed the aggregate sum of Five Hundred
1457 Dollars (\$500.00) per month received for active service as a
1458 commissioned officer in the Armed Forces of the United States for
1459 any month during any part of which such members of the Armed
1460 Forces (i) served in a combat zone as designated by Executive
1461 Order of the President of the United States; or (ii) was
1462 hospitalized as a result of wounds, disease or injury incurred
1463 while serving in such combat zone.

1464 (o) The proceeds received from federal and state
1465 forestry incentives programs.

1466 (p) The amount representing the difference between the
1467 increase of gross income derived from sales for export outside the
1468 United States as compared to the preceding tax year wherein gross
1469 income from export sales was highest, and the net increase in
1470 expenses attributable to such increased exports. In the absence

1471 of direct accounting the ratio of net profits to total sales may
1472 be applied to the increase in export sales. This paragraph (p)
1473 shall only apply to businesses located in this state engaging in
1474 the international export of Mississippi goods and services. Such
1475 goods or services shall have at least fifty percent (50%) of value
1476 added at a location in Mississippi.

1477 (q) Amounts paid by the federal government for the
1478 construction of soil conservation systems as required by a
1479 conservation plan adopted pursuant to 16 USCS 3801 et seq.

1480 (r) The amount deposited in a medical savings account,
1481 and any interest accrued thereon, that is a part of a medical
1482 savings account program as specified in the Medical Savings
1483 Account Act under Sections 71-9-1 through 71-9-9; provided,
1484 however, that any amount withdrawn from such account for purposes
1485 other than paying eligible medical expense or to procure health
1486 coverage, shall be included in gross income.

1487 (s) Amounts paid by the Mississippi Soil and Water
1488 Conservation Commission from the Mississippi Soil and Water
1489 Cost-Share Program for the installation of water quality best
1490 management practices.

1491 (t) Dividends received by a holding corporation, as
1492 defined in Section 27-13-1, from a subsidiary corporation, as
1493 defined in Section 27-13-1.

1494 (u) Interest, dividends, gains or income of any kind on
1495 any account in the Mississippi Affordable College Savings Trust
1496 Fund, as established in Sections 37-155-101 through 37-155-125, to
1497 the extent that such amounts remain on deposit in the MACS Trust
1498 Fund or are withdrawn pursuant to a qualified withdrawal, as
1499 defined in Section 37-155-105.

1500 (v) Interest, dividends or gains accruing on the
1501 payments made pursuant to a prepaid tuition contract, as provided
1502 for in Section 37-155-17.

1503 (5) Prisoners of war, missing in action-taxable status.

1504 (a) Members of the Armed Forces. Gross income does not
1505 include compensation received for active service as a member of
1506 the Armed Forces of the United States for any month during any
1507 part of which such member is in a missing status, as defined in
1508 paragraph (d) of this subsection, during the Vietnam Conflict as a
1509 result of such conflict.

1510 (b) Civilian employees. Gross income does not include
1511 compensation received for active service as an employee for any
1512 month during any part of which such employee is in a missing
1513 status during the Vietnam Conflict as a result of such conflict.

1514 (c) Period of conflict. For the purpose of this
1515 subsection, the Vietnam Conflict began February 28, 1961, and ends
1516 on the date designated by the President by Executive Order as the
1517 date of the termination of combatant activities in Vietnam. For
1518 the purpose of this subsection, an individual is in a missing
1519 status as a result of the Vietnam Conflict if immediately before
1520 such status began he was performing service in Vietnam or was
1521 performing service in Southeast Asia in direct support of military
1522 operations in Vietnam. "Southeast Asia" as used in this paragraph
1523 is defined to include Cambodia, Laos, Thailand and waters adjacent
1524 thereto.

1525 (d) "Missing status" means the status of an employee or
1526 member of the Armed Forces who is in active service and is
1527 officially carried or determined to be absent in a status of (i)
1528 missing; (ii) missing in action; (iii) interned in a foreign
1529 country; (iv) captured, beleaguered or besieged by a hostile
1530 force; or (v) detained in a foreign country against his will; but
1531 does not include the status of an employee or member of the Armed
1532 Forces for a period during which he is officially determined to be
1533 absent from his post of duty without authority.

1534 (e) "Active service" means active federal service by an
1535 employee or member of the Armed Forces of the United States in an
1536 active duty status.

1537 (f) "Employee" means one who is a citizen or national
1538 of the United States or an alien admitted to the United States for
1539 permanent residence and is a resident of the State of Mississippi
1540 and is employed in or under a federal executive agency or
1541 department of the Armed Forces.

1542 (g) "Compensation" means (i) basic pay; (ii) special
1543 pay; (iii) incentive pay; (iv) basic allowance for quarters; (v)
1544 basic allowance for subsistence; and (vi) station per diem
1545 allowances for not more than ninety (90) days.

1546 (h) If refund or credit of any overpayment of tax for
1547 any taxable year resulting from the application of subsection (5)
1548 of this section is prevented by the operation of any law or rule
1549 of law, such refund or credit of such overpayment of tax may,
1550 nevertheless, be made or allowed if claim therefor is filed with
1551 the State Tax Commission within three (3) years after the date of
1552 the enactment of this subsection.

1553 (i) The provisions of this subsection shall be
1554 effective for taxable years ending on or after February 28, 1961.

1555 (6) A shareholder of an S corporation, as defined in Section
1556 27-8-3(1)(g), shall take into account the income, loss, deduction
1557 or credit of the S corporation only to the extent provided in
1558 Section 27-8-7(2).

1559 SECTION 3. Section 27-7-17, Mississippi Code of 1972, is
1560 amended as follows:

1561 **[Through June 30, 2003, this section shall read as follows:]**

1562 27-7-17. In computing taxable income, there shall be allowed
1563 as deductions:

1564 (1) **Business deductions.**

1565 (a) Business expenses. All the ordinary and necessary
1566 expenses paid or incurred during the taxable year in carrying on
1567 any trade or business, including a reasonable allowance for
1568 salaries or other compensation for personal services actually
1569 rendered; nonreimbursable traveling expenses incident to current

1570 employment, including a reasonable amount expended for meals and
1571 lodging while away from home in the pursuit of a trade or
1572 business; and rentals or other payments required to be made as a
1573 condition of the continued use or possession, for purposes of the
1574 trade or business of property to which the taxpayer has not taken
1575 or is not taking title or in which he had no equity. Expense
1576 incurred in connection with earning and distributing nontaxable
1577 income is not an allowable deduction. Limitations on
1578 entertainment expenses shall conform to the provisions of the
1579 Internal Revenue Code of 1986.

1580 (b) Interest. All interest paid or accrued during the
1581 taxable year on business indebtedness, except interest upon the
1582 indebtedness for the purchase of tax-free bonds, or any stocks,
1583 the dividends from which are nontaxable under the provisions of
1584 this article; provided, however, in the case of securities
1585 dealers, interest payments or accruals on loans, the proceeds of
1586 which are used to purchase tax-exempt securities, shall be
1587 deductible if income from otherwise tax-free securities is
1588 reported as income. Investment interest expense shall be limited
1589 to investment income. Interest expense incurred for the purchase
1590 of treasury stock, to pay dividends, or incurred as a result of an
1591 undercapitalized affiliated corporation may not be deducted unless
1592 an ordinary and necessary business purpose can be established to
1593 the satisfaction of the commissioner. For the purposes of this
1594 paragraph, the phrase "interest upon the indebtedness for the
1595 purchase of tax-free bonds" applies only to the indebtedness
1596 incurred for the purpose of directly purchasing tax-free bonds and
1597 does not apply to any other indebtedness incurred in the regular
1598 course of the taxpayer's business. Any corporation, association,
1599 organization or other entity taxable under Section 27-7-23(c)
1600 shall allocate interest expense as provided in Section
1601 27-7-23(c)(3)(I).

1602 (c) Taxes. Taxes paid or accrued within the taxable
1603 year, except state and federal income taxes, excise taxes based on
1604 or measured by net income, estate and inheritance taxes, gift
1605 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
1606 use taxes unless incurred as an item of expense in a trade or
1607 business or in the production of taxable income. In the case of
1608 an individual, taxes permitted as an itemized deduction under the
1609 provisions of subsection (3)(a) of this section are to be claimed
1610 thereunder.

1611 (d) Business losses.

1612 (i) Losses sustained during the taxable year not
1613 compensated for by insurance or otherwise, if incurred in trade or
1614 business, or nonbusiness transactions entered into for profit.

1615 (ii) Limitations on losses from passive activities
1616 and rental real estate shall conform to the provisions of the
1617 Internal Revenue Code of 1986.

1618 (e) Bad debts. Losses from debts ascertained to be
1619 worthless and charged off during the taxable year, if sustained in
1620 the conduct of the regular trade or business of the taxpayer;
1621 provided, that such losses shall be allowed only when the taxpayer
1622 has reported as income, on the accrual basis, the amount of such
1623 debt or account.

1624 (f) Depreciation. A reasonable allowance for
1625 exhaustion, wear and tear of property used in the trade or
1626 business, or rental property, and depreciation upon buildings
1627 based upon their reasonable value as of March 16, 1912, if
1628 acquired prior thereto, and upon cost if acquired subsequent to
1629 that date.

1630 (g) Depletion. In the case of mines, oil and gas
1631 wells, other natural deposits and timber, a reasonable allowance
1632 for depletion and for depreciation of improvements, based upon
1633 cost, including cost of development, not otherwise deducted, or
1634 fair market value as of March 16, 1912, if acquired prior to that

1635 date, such allowance to be made upon regulations prescribed by the
1636 commissioner, with the approval of the Governor.

1637 (h) Contributions or gifts. Except as otherwise
1638 provided in subsection (3)(a) of this section for individuals,
1639 contributions or gifts made by corporations within the taxable
1640 year to corporations, organizations, associations or institutions,
1641 including Community Chest funds, foundations and trusts created
1642 solely and exclusively for religious, charitable, scientific or
1643 educational purposes, or for the prevention of cruelty to children
1644 or animals, no part of the net earnings of which inure to the
1645 benefit of any private stockholder or individual. This deduction
1646 shall be allowed in an amount not to exceed twenty percent (20%)
1647 of the net income. Such contributions or gifts shall be allowable
1648 as deductions only if verified under rules and regulations
1649 prescribed by the commissioner, with the approval of the Governor.
1650 Contributions made in any form other than cash shall be allowed as
1651 a deduction, subject to the limitations herein provided, in an
1652 amount equal to the actual market value of the contributions at
1653 the time the contribution is actually made and consummated.

1654 (i) Reserve funds - insurance companies. In the case
1655 of insurance companies the net additions required by law to be
1656 made within the taxable year to reserve funds when such reserve
1657 funds are maintained for the purpose of liquidating policies at
1658 maturity.

1659 (j) Annuity income. The sums, other than dividends,
1660 paid within the taxpayer year on policy or annuity contracts when
1661 such income has been included in gross income.

1662 (k) Contributions to employee pension plans.
1663 Contributions made by an employer to a plan or a trust forming
1664 part of a pension plan, stock bonus plan, disability or
1665 death-benefit plan, or profit-sharing plan of such employer for
1666 the exclusive benefit of some or all of his, their, or its
1667 employees, or their beneficiaries, shall be deductible from his,

1668 their, or its income only to the extent that, and for the taxable
1669 year in which, the contribution is deductible for federal income
1670 tax purposes under the Internal Revenue Code of 1986 and any other
1671 provisions of similar purport in the Internal Revenue Laws of the
1672 United States, and the rules, regulations, rulings and
1673 determinations promulgated thereunder, provided that:

1674 (i) The plan or trust be irrevocable.

1675 (ii) The plan or trust constitute a part of a
1676 pension plan, stock bonus plan, disability or death-benefit plan,
1677 or profit-sharing plan for the exclusive benefit of some or all of
1678 the employer's employees and/or officers, or their beneficiaries,
1679 for the purpose of distributing the corpus and income of the plan
1680 or trust to such employees and/or officers, or their
1681 beneficiaries.

1682 (iii) No part of the corpus or income of the plan
1683 or trust can be used for purposes other than for the exclusive
1684 benefit of employees and/or officers, or their beneficiaries.

1685 Contributions to all plans or to all trusts of real or
1686 personal property (or real and personal property combined) or to
1687 insured plans created under a retirement plan for which provision
1688 has been made under the laws of the United States of America,
1689 making such contributions deductible from income for federal
1690 income tax purposes, shall be deductible only to the same extent
1691 under the Income Tax Laws of the State of Mississippi.

1692 (1) Net operating loss carrybacks and carryovers. A
1693 net operating loss for any taxable year ending after December 31,
1694 1993, and taxable years thereafter, shall be a net operating loss
1695 carryback to each of the three (3) taxable years preceding the
1696 taxable year of the loss. If the net operating loss for any
1697 taxable year is not exhausted by carrybacks to the three (3)
1698 taxable years preceding the taxable year of the loss, then there
1699 shall be a net operating loss carryover to each of the fifteen

1700 (15) taxable years following the taxable year of the loss
1701 beginning with any taxable year after December 31, 1991.

1702 For any taxable year ending after December 31, 1997, the
1703 period for net operating loss carrybacks and net operating loss
1704 carryovers shall be the same as those established by the Internal
1705 Revenue Code and the rules, regulations, rulings and
1706 determinations promulgated thereunder.

1707 The term "net operating loss," for the purposes of this
1708 paragraph, shall be the excess of the deductions allowed over the
1709 gross income; provided, however, the following deductions shall
1710 not be allowed in computing same:

1711 (i) No net operating loss deduction shall be
1712 allowed.

1713 (ii) No personal exemption deduction shall be
1714 allowed.

1715 (iii) Allowable deductions which are not
1716 attributable to taxpayer's trade or business shall be allowed only
1717 to the extent of the amount of gross income not derived from such
1718 trade or business.

1719 Any taxpayer entitled to a carryback period as provided by
1720 this paragraph may elect to relinquish the entire carryback period
1721 with respect to a net operating loss for any taxable year ending
1722 after December 31, 1991. The election shall be made in the manner
1723 prescribed by the State Tax Commission and shall be made by the
1724 due date, including extensions of time, for filing the taxpayer's
1725 return for the taxable year of the net operating loss for which
1726 the election is to be in effect. The election, once made for any
1727 taxable year, shall be irrevocable for that taxable year.

1728 (m) Amortization of pollution or environmental control
1729 facilities. Allowance of deduction. Every taxpayer, at his
1730 election, shall be entitled to a deduction for pollution or
1731 environmental control facilities to the same extent as that

1732 allowed under the Internal Revenue Code and the rules,
1733 regulations, rulings and determinations promulgated thereunder.

1734 (n) Dividend distributions - real estate investment
1735 trusts. "Real estate investment trust" (hereinafter referred to
1736 as REIT) shall have the meaning ascribed to such term in Section
1737 856 of the federal Internal Revenue Code of 1986, as amended. A
1738 REIT is allowed a dividend distributed deduction if the dividend
1739 distributions meet the requirements of Section 857 or are
1740 otherwise deductible under Section 858 or 860, federal Internal
1741 Revenue Code of 1986, as amended. In addition:

1742 (i) A dividend distributed deduction shall only be
1743 allowed for dividends paid by a publicly traded REIT. A qualified
1744 REIT subsidiary shall be allowed a dividend distributed deduction
1745 if its owner is a publicly traded REIT.

1746 (ii) Income generated from real estate contributed
1747 or sold to a REIT by a shareholder or related party shall not give
1748 rise to a dividend distributed deduction, unless the shareholder
1749 or related party would have received the dividend distributed
1750 deduction under this chapter.

1751 (iii) A holding corporation receiving a dividend
1752 from a REIT shall not be allowed the deduction in Section
1753 27-7-15(4)(t).

1754 (iv) Any REIT not allowed the dividend distributed
1755 deduction in the federal Internal Revenue Code of 1986, as
1756 amended, shall not be allowed a dividend distributed deduction
1757 under this chapter.

1758 The commissioner is authorized to promulgate rules and
1759 regulations consistent with the provisions in Section 269 of the
1760 federal Internal Revenue Code of 1986, as amended, so as to
1761 prevent the evasion or avoidance of state income tax.

1762 (o) Contributions to college savings trust fund
1763 accounts. Contributions or payments to a Mississippi Affordable
1764 College Savings Program account are deductible as provided under

1765 Section 37-155-113. Payments made under a prepaid tuition
1766 contract entered into under the Mississippi Prepaid Affordable
1767 College Tuition Program are deductible as provided under Section
1768 37-155-17.

1769 (2) **Restrictions on the deductibility of certain intangible**
1770 **expenses and interest expenses with a related member.**

1771 (a) As used in this subsection (2):

1772 (i) "Intangible expenses and costs" include:

1773 1. Expenses, losses and costs for, related

1774 to, or in connection directly or indirectly with the direct or

1775 indirect acquisition, use, maintenance or management, ownership,

1776 sale, exchange or any other disposition of intangible property to

1777 the extent such amounts are allowed as deductions or costs in

1778 determining taxable income under this chapter;

1779 2. Expenses or losses related to or incurred

1780 in connection directly or indirectly with factoring transactions

1781 or discounting transactions;

1782 3. Royalty, patent, technical and copyright

1783 fees;

1784 4. Licensing fees; and

1785 5. Other similar expenses and costs.

1786 (ii) "Intangible property" means patents, patent

1787 applications, trade names, trademarks, service marks, copyrights

1788 and similar types of intangible assets.

1789 (iii) "Interest expenses and cost" means amounts

1790 directly or indirectly allowed as deductions for purposes of

1791 determining taxable income under this chapter to the extent such

1792 interest expenses and costs are directly or indirectly for,

1793 related to, or in connection with the direct or indirect

1794 acquisition maintenance, management, ownership, sale, exchange or

1795 disposition of intangible property.

1796 (iv) "Related member" means an entity or person

1797 that, with respect to the taxpayer during all or any portion of

1798 the taxable year, is a related entity, a component member as
1799 defined in the Internal Revenue Code, or is an entity or a person
1800 to or from whom there is attribution of stock ownership in
1801 accordance with Section 1563(e) of the Internal Revenue Code.

1802 (v) "Related entity" means:

1803 1. A stockholder who is an individual or a
1804 member of the stockholder's family, as defined in regulations
1805 prescribed by the commissioner, if the stockholder and the members
1806 of the stockholder's family own, directly, indirectly,
1807 beneficially or constructively, in the aggregate, at least fifty
1808 percent (50%) of the value of the taxpayer's outstanding stock;

1809 2. A stockholder, or a stockholder's
1810 partnership, limited liability company, estate, trust or
1811 corporation, if the stockholder and the stockholder's
1812 partnerships, limited liability companies, estates, trusts and
1813 corporations own, directly, indirectly, beneficially or
1814 constructively, in the aggregate, at least fifty percent (50%) of
1815 the value of the taxpayer's outstanding stock;

1816 3. A corporation, or a party related to the
1817 corporation in a manner that would require an attribution of stock
1818 from the corporation to the party or from the party to the
1819 corporation, if the taxpayer owns, directly, indirectly,
1820 beneficially or constructively, at least fifty percent (50%) of
1821 the value of the corporation's outstanding stock under regulation
1822 prescribed by the commissioner;

1823 4. Any entity or person which would be a
1824 related member under this section if the taxpayer were considered
1825 a corporation for purposes of this section.

1826 (b) In computing net income, a taxpayer shall add back
1827 otherwise deductible interest expenses and costs and intangible
1828 expenses and costs directly or indirectly paid, accrued to or
1829 incurred, in connection directly or indirectly with one or more
1830 direct or indirect transactions with one or more related members.

1831 (c) The adjustments required by this subsection shall
1832 not apply to such portion of interest expenses and costs and
1833 intangible expenses and costs that the taxpayer can establish
1834 meets one (1) of the following:

1835 (i) The related member directly or indirectly
1836 paid, accrued or incurred such portion to a person during the same
1837 income year who is not a related member; or

1838 (ii) The transaction giving rise to the interest
1839 expenses and costs or intangible expenses and costs between the
1840 taxpayer and related member was done primarily for a valid
1841 business purpose other than the avoidance of taxes, and the
1842 related member is not primarily engaged in the acquisition, use,
1843 maintenance or management, ownership, sale, exchange or any other
1844 disposition of intangible property.

1845 (d) Nothing in this subsection shall require a taxpayer
1846 to add to its net income more than once any amount of interest
1847 expenses and costs or intangible expenses and costs that the
1848 taxpayer pays, accrues or incurs to a related member.

1849 (e) The commissioner may prescribe such regulations as
1850 necessary or appropriate to carry out the purposes of this
1851 subsection, including, but not limited to, clarifying definitions
1852 of terms, rules of stock attribution, factoring and discount
1853 transactions.

1854 (3) Individual nonbusiness deductions.

1855 (a) The amount allowable for individual nonbusiness
1856 itemized deductions for federal income tax purposes, except the
1857 deduction for state income taxes paid, where the individual is
1858 eligible to elect, for the taxable year, to itemize deductions on
1859 his federal return; or

1860 (b) In lieu of the individual nonbusiness itemized
1861 deductions authorized in paragraph (a), for all purposes other
1862 than ordinary and necessary expenses paid or incurred during the

1863 taxable year in carrying on any trade or business, an optional
1864 standard deduction of:

1865 (i) Three Thousand Four Hundred Dollars
1866 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
1867 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
1868 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
1869 in the case of married individuals filing a joint or combined
1870 return;

1871 (ii) One Thousand Seven Hundred Dollars
1872 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
1873 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
1874 Three Hundred Dollars (\$2,300.00) for each calendar year
1875 thereafter in the case of married individuals filing separate
1876 returns;

1877 (iii) Three Thousand Four Hundred Dollars
1878 (\$3,400.00) in the case of a head of family; or

1879 (iv) Two Thousand Three Hundred Dollars
1880 (\$2,300.00) in the case of an individual who is not married.

1881 In the case of a husband and wife living together, having
1882 separate incomes, and filing combined returns, the standard
1883 deduction authorized may be divided in any manner they choose. In
1884 the case of separate returns by a husband and wife, the standard
1885 deduction shall not be allowed to either if the taxable income of
1886 one of the spouses is determined without regard to the standard
1887 deduction.

1888 (c) A nonresident individual shall be allowed the same
1889 individual nonbusiness deductions as are authorized for resident
1890 individuals in paragraph (a) or (b) of this subsection; however,
1891 the nonresident individual is entitled only to that proportion of
1892 the individual nonbusiness deductions as his net income from
1893 sources within the State of Mississippi bears to his total or
1894 entire net income from all sources.

1895 (3) Nothing in this section shall permit the same item to be
1896 deducted more than once, either in fact or in effect.

1897 **[From and after July 1, 2003, this section shall read as**
1898 **follows:]**

1899 27-7-17. In computing taxable income, there shall be allowed
1900 as deductions:

1901 (1) **Business deductions.**

1902 (a) Business expenses. All the ordinary and necessary
1903 expenses paid or incurred during the taxable year in carrying on
1904 any trade or business, including a reasonable allowance for
1905 salaries or other compensation for personal services actually
1906 rendered; nonreimbursable traveling expenses incident to current
1907 employment, including a reasonable amount expended for meals and
1908 lodging while away from home in the pursuit of a trade or
1909 business; and rentals or other payments required to be made as a
1910 condition of the continued use or possession, for purposes of the
1911 trade or business of property to which the taxpayer has not taken
1912 or is not taking title or in which he had no equity. Expense
1913 incurred in connection with earning and distributing nontaxable
1914 income is not an allowable deduction. Limitations on
1915 entertainment expenses shall conform to the provisions of the
1916 Internal Revenue Code of 1986.

1917 (b) Interest. All interest paid or accrued during the
1918 taxable year on business indebtedness, except interest upon the
1919 indebtedness for the purchase of tax-free bonds, or any stocks,
1920 the dividends from which are nontaxable under the provisions of
1921 this article; provided, however, in the case of securities
1922 dealers, interest payments or accruals on loans, the proceeds of
1923 which are used to purchase tax-exempt securities, shall be
1924 deductible if income from otherwise tax-free securities is
1925 reported as income. Investment interest expense shall be limited
1926 to investment income. Interest expense incurred for the purchase
1927 of treasury stock, to pay dividends, or incurred as a result of an

1928 undercapitalized affiliated corporation may not be deducted unless
1929 an ordinary and necessary business purpose can be established to
1930 the satisfaction of the commissioner. For the purposes of this
1931 paragraph, the phrase "interest upon the indebtedness for the
1932 purchase of tax-free bonds" applies only to the indebtedness
1933 incurred for the purpose of directly purchasing tax-free bonds and
1934 does not apply to any other indebtedness incurred in the regular
1935 course of the taxpayer's business. Any corporation, association,
1936 organization or other entity taxable under Section 27-7-23(c)
1937 shall allocate interest expense as provided in Section
1938 27-7-23(c)(4)(H).

1939 (c) Taxes. Taxes paid or accrued within the taxable
1940 year, except state and federal income taxes, excise taxes based on
1941 or measured by net income, estate and inheritance taxes, gift
1942 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
1943 use taxes unless incurred as an item of expense in a trade or
1944 business or in the production of taxable income. In the case of
1945 an individual, taxes permitted as an itemized deduction under the
1946 provisions of subsection (2)(a) of this section are to be claimed
1947 thereunder.

1948 (d) Business losses.

1949 (i) Losses sustained during the taxable year not
1950 compensated for by insurance or otherwise, if incurred in trade or
1951 business, or nonbusiness transactions entered into for profit.

1952 (ii) Limitations on losses from passive activities
1953 and rental real estate shall conform to the provisions of the
1954 Internal Revenue Code of 1986.

1955 (e) Bad debts. Losses from debts ascertained to be
1956 worthless and charged off during the taxable year, if sustained in
1957 the conduct of the regular trade or business of the taxpayer;
1958 provided, that such losses shall be allowed only when the taxpayer
1959 has reported as income, on the accrual basis, the amount of such
1960 debt or account.

1961 (f) Depreciation. A reasonable allowance for
1962 exhaustion, wear and tear of property used in the trade or
1963 business, or rental property, and depreciation upon buildings
1964 based upon their reasonable value as of March 16, 1912, if
1965 acquired prior thereto, and upon cost if acquired subsequent to
1966 that date.

1967 (g) Depletion. In the case of mines, oil and gas
1968 wells, other natural deposits and timber, a reasonable allowance
1969 for depletion and for depreciation of improvements, based upon
1970 cost, including cost of development, not otherwise deducted, or
1971 fair market value as of March 16, 1912, if acquired prior to that
1972 date, such allowance to be made upon regulations prescribed by the
1973 commissioner, with the approval of the Governor.

1974 (h) Contributions or gifts. Except as otherwise
1975 provided in subsection (2)(a) of this section for individuals,
1976 contributions or gifts made by corporations within the taxable
1977 year to corporations, organizations, associations or institutions,
1978 including Community Chest funds, foundations and trusts created
1979 solely and exclusively for religious, charitable, scientific or
1980 educational purposes, or for the prevention of cruelty to children
1981 or animals, no part of the net earnings of which inure to the
1982 benefit of any private stockholder or individual. This deduction
1983 shall be allowed in an amount not to exceed twenty percent (20%)
1984 of the net income. Such contributions or gifts shall be allowable
1985 as deductions only if verified under rules and regulations
1986 prescribed by the commissioner, with the approval of the Governor.
1987 Contributions made in any form other than cash shall be allowed as
1988 a deduction, subject to the limitations herein provided, in an
1989 amount equal to the actual market value of the contributions at
1990 the time the contribution is actually made and consummated.

1991 (i) Reserve funds - insurance companies. In the case
1992 of insurance companies the net additions required by law to be
1993 made within the taxable year to reserve funds when such reserve

1994 funds are maintained for the purpose of liquidating policies at
1995 maturity.

1996 (j) Annuity income. The sums, other than dividends,
1997 paid within the taxpayer year on policy or annuity contracts when
1998 such income has been included in gross income.

1999 (k) Contributions to employee pension plans.
2000 Contributions made by an employer to a plan or a trust forming
2001 part of a pension plan, stock bonus plan, disability or
2002 death-benefit plan, or profit-sharing plan of such employer for
2003 the exclusive benefit of some or all of his, their, or its
2004 employees, or their beneficiaries, shall be deductible from his,
2005 their, or its income only to the extent that, and for the taxable
2006 year in which, the contribution is deductible for federal income
2007 tax purposes under the Internal Revenue Code of 1986 and any other
2008 provisions of similar purport in the Internal Revenue Laws of the
2009 United States, and the rules, regulations, rulings and
2010 determinations promulgated thereunder, provided that:

2011 (i) The plan or trust be irrevocable.

2012 (ii) The plan or trust constitute a part of a
2013 pension plan, stock bonus plan, disability or death-benefit plan,
2014 or profit-sharing plan for the exclusive benefit of some or all of
2015 the employer's employees and/or officers, or their beneficiaries,
2016 for the purpose of distributing the corpus and income of the plan
2017 or trust to such employees and/or officers, or their
2018 beneficiaries.

2019 (iii) No part of the corpus or income of the plan
2020 or trust can be used for purposes other than for the exclusive
2021 benefit of employees and/or officers, or their beneficiaries.

2022 Contributions to all plans or to all trusts of real or
2023 personal property (or real and personal property combined) or to
2024 insured plans created under a retirement plan for which provision
2025 has been made under the laws of the United States of America,
2026 making such contributions deductible from income for federal

2027 income tax purposes, shall be deductible only to the same extent
2028 under the Income Tax Laws of the State of Mississippi.

2029 (1) Net operating loss carrybacks and carryovers. A
2030 net operating loss for any taxable year ending after December 31,
2031 1993, and taxable years thereafter, shall be a net operating loss
2032 carryback to each of the three (3) taxable years preceding the
2033 taxable year of the loss. If the net operating loss for any
2034 taxable year is not exhausted by carrybacks to the three (3)
2035 taxable years preceding the taxable year of the loss, then there
2036 shall be a net operating loss carryover to each of the fifteen
2037 (15) taxable years following the taxable year of the loss
2038 beginning with any taxable year after December 31, 1991.

2039 For any taxable year ending after December 31, 1997, the
2040 period for net operating loss carrybacks and net operating loss
2041 carryovers shall be the same as those established by the Internal
2042 Revenue Code and the rules, regulations, rulings and
2043 determinations promulgated thereunder.

2044 The term "net operating loss," for the purposes of this
2045 paragraph, shall be the excess of the deductions allowed over the
2046 gross income; provided, however, the following deductions shall
2047 not be allowed in computing same:

2048 (i) No net operating loss deduction shall be
2049 allowed.

2050 (ii) No personal exemption deduction shall be
2051 allowed.

2052 (iii) Allowable deductions which are not
2053 attributable to taxpayer's trade or business shall be allowed only
2054 to the extent of the amount of gross income not derived from such
2055 trade or business.

2056 Any taxpayer entitled to a carryback period as provided by
2057 this paragraph may elect to relinquish the entire carryback period
2058 with respect to a net operating loss for any taxable year ending
2059 after December 31, 1991. The election shall be made in the manner

2060 prescribed by the State Tax Commission and shall be made by the
2061 due date, including extensions of time, for filing the taxpayer's
2062 return for the taxable year of the net operating loss for which
2063 the election is to be in effect. The election, once made for any
2064 taxable year, shall be irrevocable for that taxable year.

2065 (m) Amortization of pollution or environmental control
2066 facilities. Allowance of deduction. Every taxpayer, at his
2067 election, shall be entitled to a deduction for pollution or
2068 environmental control facilities to the same extent as that
2069 allowed under the Internal Revenue Code and the rules,
2070 regulations, rulings and determinations promulgated thereunder.

2071 (n) Dividend distributions - real estate investment
2072 trusts. "Real estate investment trust" (hereinafter referred to
2073 as REIT) shall have the meaning ascribed to such term in Section
2074 856 of the federal Internal Revenue Code of 1986, as amended. A
2075 REIT is allowed a dividend distributed deduction if the dividend
2076 distributions meet the requirements of Section 857 or are
2077 otherwise deductible under Section 858 or 860, federal Internal
2078 Revenue Code of 1986, as amended. In addition:

2079 (i) A dividend distributed deduction shall only be
2080 allowed for dividends paid by a publicly traded REIT. A qualified
2081 REIT subsidiary shall be allowed a dividend distributed deduction
2082 if its owner is a publicly traded REIT.

2083 (ii) Income generated from real estate contributed
2084 or sold to a REIT by a shareholder or related party shall not give
2085 rise to a dividend distributed deduction, unless the shareholder
2086 or related party would have received the dividend distributed
2087 deduction under this chapter.

2088 (iii) A holding corporation receiving a dividend
2089 from a REIT shall not be allowed the deduction in Section
2090 27-7-15(4)(t).

2091 (iv) Any REIT not allowed the dividend distributed
2092 deduction in the federal Internal Revenue Code of 1986, as

2093 amended, shall not be allowed a dividend distributed deduction
2094 under this chapter.

2095 The commissioner is authorized to promulgate rules and
2096 regulations consistent with the provisions in Section 269 of the
2097 federal Internal Revenue Code of 1986, as amended, so as to
2098 prevent the evasion or avoidance of state income tax.

2099 (o) Contributions to college savings trust fund
2100 accounts. Contributions or payments to a Mississippi Affordable
2101 College Savings Program account are deductible as provided under
2102 Section 37-155-113. Payments made under a prepaid tuition
2103 contract entered into under the Mississippi Prepaid Affordable
2104 College Tuition Program are deductible as provided under Section
2105 37-155-17.

2106 (2) **Individual nonbusiness deductions.**

2107 (a) The amount allowable for individual nonbusiness
2108 itemized deductions for federal income tax purposes, except the
2109 deduction for state income taxes paid, where the individual is
2110 eligible to elect, for the taxable year, to itemize deductions on
2111 his federal return; or

2112 (b) In lieu of the individual nonbusiness itemized
2113 deductions authorized in paragraph (a), for all purposes other
2114 than ordinary and necessary expenses paid or incurred during the
2115 taxable year in carrying on any trade or business, an optional
2116 standard deduction of:

2117 (i) Three Thousand Four Hundred Dollars
2118 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
2119 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
2120 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
2121 in the case of married individuals filing a joint or combined
2122 return;

2123 (ii) One Thousand Seven Hundred Dollars
2124 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
2125 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand

2126 Three Hundred Dollars (\$2,300.00) for each calendar year
2127 thereafter in the case of married individuals filing separate
2128 returns;

2129 (iii) Three Thousand Four Hundred Dollars
2130 (\$3,400.00) in the case of a head of family; or

2131 (iv) Two Thousand Three Hundred Dollars
2132 (\$2,300.00) in the case of an individual who is not married.

2133 In the case of a husband and wife living together, having
2134 separate incomes, and filing combined returns, the standard
2135 deduction authorized may be divided in any manner they choose. In
2136 the case of separate returns by a husband and wife, the standard
2137 deduction shall not be allowed to either if the taxable income of
2138 one of the spouses is determined without regard to the standard
2139 deduction.

2140 (c) A nonresident individual shall be allowed the same
2141 individual nonbusiness deductions as are authorized for resident
2142 individuals in paragraph (a) or (b) of this subsection; however,
2143 the nonresident individual is entitled only to that proportion of
2144 the individual nonbusiness deductions as his net income from
2145 sources within the State of Mississippi bears to his total or
2146 entire net income from all sources.

2147 (3) Nothing in this section shall permit the same item to be
2148 deducted more than once, either in fact or in effect.

2149 SECTION 4. Section 27-7-23, Mississippi Code of 1972, is
2150 amended as follows:

2151 27-7-23. (a) **Definitions.**

2152 (1) "Doing business" means the operation of any
2153 business enterprise or activity in Mississippi for financial
2154 profit or economic gain, including, but not limited to, the
2155 following:

2156 (A) The regular maintenance of an office or other
2157 place of business in Mississippi; or

2158 (B) The regular maintenance in Mississippi of an
2159 inventory of merchandise or material for sale, distribution or
2160 manufacture, regardless of whether kept on the premises of the
2161 taxpayer or otherwise; or

2162 (C) The selling or distributing of merchandise to
2163 customers in Mississippi directly from a company-owned or operated
2164 vehicle when title to the merchandise is transferred from the
2165 seller or distributor to the customer at the time of the sale or
2166 distribution (transient selling); or

2167 (D) The regular rendering of service to clients or
2168 customers in Mississippi in person or by agents or employees; or

2169 (E) The owning, renting or operating of business
2170 or income-producing property, real or personal, in Mississippi; or

2171 (F) The performing of contracts, prime or sublet
2172 work, for the construction, repair or renovation of real or
2173 personal property.

2174 (2) "Business income" means income of any type or
2175 class, and from any activity that meets the relationship described
2176 in the transactional test or the functional test described in this
2177 paragraph (2). The classification of income by occasionally used
2178 labels, including, but not limited to, manufacturing income,
2179 compensation for services, sales income interest, dividends,
2180 rents, royalties, gains, operating income, and nonoperating income
2181 shall not be considered when determining whether income is
2182 business or nonbusiness income. All income of the taxpayer is
2183 business income unless clearly classifiable as nonbusiness income.
2184 A taxpayer seeking to overcome a classification of income as
2185 business income must establish by a preponderance of the evidence
2186 that the income has been incorrectly classified.

2187 (A) Transactional test. Business income includes
2188 income arising from transactions and activity in the regular
2189 course of the taxpayer's trade or business.

2190 (i) If the transaction or activity is in the
2191 regular course of the taxpayer's trade or business, part of which
2192 trade or business is conducted within Mississippi, the resulting
2193 income of the transaction or activity is business income for
2194 Mississippi. Income may be business income even though the actual
2195 transaction or activity that gives rise to the income does not
2196 occur in Mississippi.

2197 (ii) For a transaction or activity to be in
2198 the regular course of the taxpayer's trade or business, the
2199 transactions or activity need not be one that frequently occurs in
2200 the trade or business, although most frequently occurring
2201 transactions or activities shall be considered to be in the
2202 regular course of a trade or business. It is sufficient to
2203 classify a transaction or activity as being in the regular course
2204 of a trade or business if it is reasonable to conclude
2205 transactions of that type are customary in the kind of trade or
2206 business being conducted or are within the scope of what the trade
2207 or business does.

2208 (B) Functional test. Business income includes
2209 income from tangible and intangible property if the acquisition,
2210 management and/or disposition of the property constitute integral
2211 parts of the taxpayer's regular trade or business operation.

2212 (i) Under the functional test, business
2213 income need not be derived from transactions or activities that
2214 are in the regular course of the taxpayer's own particular trade
2215 or business. It shall be sufficient if the property from which
2216 the income is derived is or was an integral, functional, necessary
2217 or operative component of the taxpayer's trade or business
2218 operations, part of which trade or business is or was conducted
2219 within this state.

2220 (ii) Income that is derived from isolated
2221 sales, leases, assignments, licenses and other infrequently
2222 occurring dispositions, transfers or transactions involving

2223 property, including transactions made in liquidation or the
2224 winding up of business is business income if the property is or
2225 was used in the taxpayer's trade or business operation. Income
2226 from the licensing of intangible assets, such as patents,
2227 copyrights, trademarks, service marks, goodwill, know-how, trade
2228 secrets and similar assets, that were developed or acquired for
2229 use by the taxpayer in his trade or business operations,
2230 constitute business income whether the licensing itself
2231 constituted the operation of a trade or business and whether the
2232 taxpayer remains in the same trade or business from or for which
2233 the intangible asset was developed or acquired.

2234 (iii) Under the functional test, income from
2235 intangible property is business income when the intangible
2236 property serves an operating function, as opposed to solely an
2237 investment function. The relevant inquiry shall focus on whether
2238 the property is or was held in furtherance of the taxpayer's trade
2239 or business, that is, on the objective characteristics of the
2240 intangible property's use or acquisition and its relation to the
2241 taxpayer and the taxpayer's activities. The functional test is
2242 not satisfied where the holding of the property is limited solely
2243 to an investment function as in the case where the holding of the
2244 property is limited to mere financial betterment of the taxpayer
2245 in general.

2246 (iv) If the property is or was held in
2247 furtherance of the taxpayer's trade or business beyond mere
2248 financial betterment, then income from the property may be
2249 business income even though the actual transaction or activity
2250 involving the property that gives rise to the income does not
2251 occur in Mississippi.

2252 (v) If, with respect to an item of property,
2253 a taxpayer takes a deduction from business income that is
2254 apportioned to Mississippi, or includes that item of property in
2255 the property factor, it is presumed that the item of property is

2256 or was integral to the taxpayer's trade or business operations.

2257 No presumption arises from the absence of any of this action.

2258 (vi) Application of the functional test is
2259 generally unaffected by the form of the property. Income arising
2260 from intangible property is business income when the intangible
2261 property itself or the underlying value of the intangible property
2262 is or was an integral, functional, necessary or operative
2263 component to the taxpayer's trade or business operation.

2264 Therefore, while treatment of income derived from transactions
2265 involving intangible property as business income may be supported
2266 by a finding that the issuer of the intangible property and the
2267 taxpayer are engaged in the same trade or business, establishment
2268 of such a relationship is not the exclusive basis for concluding
2269 that the income constitutes business income. It is sufficient to
2270 support a finding of business income if the holding of the
2271 intangible property served an operational rather than an
2272 investment function.

2273 (3) "Nonbusiness income" means all income that does not
2274 meet the definition of business income.

2275 (4) "Commercial domicile" means the principal place
2276 from which the trade or business of the taxpayer is directed or
2277 managed.

2278 (5) "State" means any state of the United States, the
2279 District of Columbia, the Commonwealth of Puerto Rico, any
2280 territory or possession of the United States, and any foreign
2281 country or political subdivision thereof.

2282 (b) **Nonresident individuals, partnerships, trusts and**
2283 **estates.**

2284 (1) The tax imposed by this article shall apply to the
2285 entire net income of a taxable nonresident derived from
2286 employment, trade, business, professional, personal service or
2287 other activity for financial gain or profit, performed or carried
2288 on within Mississippi, including the rental of real or personal

2289 property located within this state or for use herein and including
2290 the sale or exchange or other disposition of tangible or
2291 intangible property having a situs in Mississippi.

2292 (2) Income derived from trade, business or other
2293 commercial activity shall be taxed to the extent that it is
2294 derived from such activity within this state. Mississippi net
2295 income shall be determined * * * in the * * * manner * * *
2296 prescribed by the commissioner for the allocation and/or
2297 apportionment of income of foreign corporations having income from
2298 sources both within and without the state.

2299 (3) A taxable nonresident shall be allowed to deduct
2300 expenses, interest, taxes, losses, bad debts, depreciation and
2301 similar business expenses only to the extent that they are
2302 allowable under this article and are attributable to the
2303 production of income allocable to and taxable by the State of
2304 Mississippi. As to allowable deductions essentially personal in
2305 nature, such as contributions to charitable organizations, medical
2306 expenses, taxes, interest and the optional standard deduction,
2307 such taxable nonresident shall be allowed deductions therefor in
2308 the ratio that the net income from sources within Mississippi
2309 bears to the total net income from all sources of such taxable
2310 nonresident, computed as if such taxable nonresident were a
2311 resident of Mississippi.

2312 (c) **Foreign corporations, associations, organizations and**
2313 **other entities.**

2314 (1) Corporations and organizations required to file.
2315 All foreign corporations and other organizations which have
2316 obtained a certificate of authority from the Secretary of State to
2317 do business in Mississippi, or corporations or organizations which
2318 are in fact doing business in Mississippi, are subject to the
2319 income tax levy and are required to file annual income tax returns
2320 unless the corporation or organization is specifically exempt from
2321 tax by this article.

2322 (2) Allocation and apportionment of income. Except as
2323 provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and
2324 27-7-24.7, Mississippi Code of 1972, any corporation or
2325 organization having business income from business activity which
2326 is taxable both within and without this state shall allocate and
2327 apportion its net business income as prescribed by the
2328 commissioner. If the business income of the corporation is
2329 derived solely from property owned or business done in this state
2330 and the corporation is not taxable in another state, the entire
2331 business income shall be allocated to this state. * * * A
2332 corporation is taxable in another state if, * * * in that state
2333 the corporation is subject to a net income tax, or a franchise tax
2334 measured by net income, or * * * if that state has jurisdiction to
2335 subject the corporation to a net income tax regardless of
2336 whether * * * the state does or does not subject the corporation
2337 to a net income tax.

2338 * * *

2339 (3) Nonbusiness income. Rents and royalties from real
2340 or tangible personal property, capital gains, interest, dividends,
2341 or patent or copyright royalties, to the extent that they
2342 constitute nonbusiness income, shall be allocated as follows:

2343 (A) Net rents and royalties from real property are
2344 allocable to the state in which the property is located.

2345 (B) Net rents and royalties from tangible personal
2346 property are allocable to the state in which the property is used,
2347 or to this state in their entirety if the corporation's commercial
2348 domicile is in this state and the corporation is not organized
2349 under the laws of or taxable in the state in which the property is
2350 utilized.

2351 (C) Capital gains and losses from sales of real
2352 property are allocable to the state in which the property is
2353 located.

2354 (D) Capital gains and losses from sales of
2355 tangible personal property are allocable to the state in which the
2356 property is located, or to this state if the corporation's
2357 commercial domicile is in this state and the corporation is not
2358 taxable in the state in which the property had a situs.

2359 (E) Capital gains and losses from sales of
2360 intangible personal property are allocable to the state of the
2361 corporation's commercial domicile.

2362 (F) Interest and dividends are allocable to the
2363 state of the corporation's commercial domicile.

2364 (G) Patent and copyright royalties are allocable
2365 to the state in which the patent or copyright is utilized by the
2366 payer, or to this state if and to the extent that the patent or
2367 copyright is utilized by the payer in a state in which the
2368 corporation is not taxable and the corporation's commercial
2369 domicile is in this state.

2370 (H) Any other nonbusiness income shall be
2371 allocated as prescribed by the commissioner.

2372 (I) All expenses connected with earning
2373 nonbusiness income, such as interest, taxes, general and
2374 administrative expenses and such other expenses relating to the
2375 production of nonbusiness income, shall be deducted from gross
2376 nonbusiness income. Nonbusiness interest expense shall be
2377 computed by using the ratio of nonbusiness assets to total assets
2378 applied to total interest expense.

2379 (d) **Foreign lenders.**

2380 (1) In the case of any foreign lender, (corporation,
2381 association, organization, individual, partnership, trusts or
2382 estates), other than: (A) a foreign insurance company subject to
2383 certification by the Commissioner of Insurance, as provided by
2384 Section 83-21-1 et seq.; or (B) a foreign lender qualified under
2385 the general laws of this state to do business herein; or (C) a
2386 foreign lender which maintains an office or place of business

2387 within this state; or (D) lenders that sold properties in this
2388 state and financed such sale and reported on the installment
2389 method, interest income received or accrued on or after January 1,
2390 1977, from loans secured by real estate or from lending on the
2391 security of real estate located within this state shall be
2392 excluded from Mississippi gross income and exempt from the
2393 Mississippi income tax levy and the reporting requirements.

2394 (2) In the case of any foreign lender exempted in
2395 paragraph (1) of this subsection, interest income received on any
2396 loan finalized or consummated after January 1, 1977, shall be
2397 excluded from Mississippi gross income and the net profits derived
2398 therefrom shall be exempt from the Mississippi income tax levy for
2399 the life of such loan.

2400 (e) **Insurance companies.** Insurance companies, other than
2401 life insurance companies, deriving premium income from within and
2402 without the state, may determine their Mississippi net income from
2403 underwriting by apportioning to this state a part of their total
2404 net underwriting income by such processes or formulas of general
2405 apportionment as are prescribed by the commissioner; provided that
2406 a company adopting this method of reporting for any year must
2407 adhere to said method of reporting for subsequent years, unless
2408 permission is granted by the commissioner to change to a different
2409 method of reporting; and provided that all affiliated companies of
2410 the same group shall use the same method of reporting.

2411 (f) **Bond requirements.** Any individual or corporation
2412 subject to the tax imposed by this article, engaged in the
2413 business of performing contracts which may require the payment of
2414 net income taxes, may be required by the commissioner, before
2415 entering into the performance of any contract or contracts the
2416 consideration of which is more than Ten Thousand Dollars
2417 (\$10,000.00), to execute and file a good and valid bond with a
2418 surety company authorized to do business in this state, or with
2419 sufficient sureties to be approved by the commissioner,

2420 conditioned that all taxes which may accrue to the State of
2421 Mississippi will be paid when due. Provided, however, that such
2422 bond shall not exceed five percent (5%) of the total contracts
2423 entered into during the taxable period, and, provided further,
2424 that any taxpayer, in lieu of furnishing such bond, may pay the
2425 maximum sum required herein as advance payment of taxes due on the
2426 net income realized from any contract or contracts performed or
2427 completed in this state.

2428 SECTION 5. Section 27-7-24.3, Mississippi Code of 1972, is
2429 amended as follows:

2430 27-7-24.3. (1) The receipts factor is a fraction, the
2431 numerator of which is the receipts of the taxpayer in this state
2432 during the taxable year and the denominator of which is the
2433 receipts of the taxpayer within and without this state during the
2434 taxable year. The method of calculating receipts for purposes of
2435 the denominator is the same as the method used in determining
2436 receipts for purposes of the numerator. The receipts factor shall
2437 include only those receipts described herein which constitute
2438 business income and are included in the computation of the
2439 apportionable income base for the taxable year.

2440 (2) The numerator of the receipts factor includes receipts
2441 from the lease or rental of real property owned by the taxpayer if
2442 the property is located within this state on receipts from the
2443 sublease of real property if the property is located within this
2444 state.

2445 (3) (a) Except as described in paragraph (b) of this
2446 subsection, the numerator of the receipts factor includes receipts
2447 from the lease or rental of tangible personal property owned by
2448 the taxpayer if the property is located within this state when it
2449 is first placed in service by the lessee.

2450 (b) Receipts from the lease or rental of transportation
2451 property owned by the taxpayer are included in the numerator of
2452 the receipts factor to the extent that the property is used in

2453 this state. The extent an aircraft will be deemed to be used in
2454 this state and the amount of the receipts that is to be included
2455 in the numerator of this state's receipts factor is determined by
2456 multiplying all the receipts from the lease or rental of the
2457 aircraft by a fraction, the numerator of which is the number of
2458 landings of the aircraft in this state and the denominator of
2459 which is the total number of landings of the aircraft. If the
2460 extent of the use of any transportation property within the state
2461 cannot be determined, then the property will be deemed to be used
2462 wholly in the state in which the property has its principal base
2463 of operations. A motor vehicle will be deemed to be used wholly
2464 in the state in which it is registered.

2465 (4) (a) The numerator of the receipts factor includes
2466 interest and fees or penalties in the nature of interest from
2467 loans secured by real property if the property is located within
2468 this state. If the property is located both within this state and
2469 one or more other states, the receipts described in this
2470 subsection are included in the numerator of the receipts factor if
2471 more than fifty percent (50%) of the fair market value of the real
2472 property is located within this state. If more than fifty percent
2473 (50%) of the fair market value of the real property is not located
2474 within any one state, then the receipts described in this
2475 subsection shall be included in the numerator of the receipts
2476 factor if the borrower is located in this state.

2477 (b) The determination of whether the real property
2478 securing a loan is located within this state shall be made as of
2479 the time the original agreement was made and any and all
2480 subsequent substitutions of collateral shall be disregarded.

2481 (5) The numerator of the receipts factor includes interest
2482 and fees or penalties in the nature of interest from loans not
2483 secured by real property if the borrower is located in this state.

2484 (6) The numerator of the receipts factor includes net gains
2485 from the sale of loans. Net gains from the sale of loans includes

2486 income recorded under coupon stripping rules of Section 1286 of
2487 the Internal Revenue Code, as in effect January 1, 1996.

2488 (a) The amount of net gains (but not less than zero)
2489 from the sale of loans secured by real property included in the
2490 numerator is determined by multiplying such net gains by a
2491 fraction the numerator of which is the amount included in the
2492 numerator of the receipts factor pursuant to subsection (4) of
2493 this section and the denominator of which is the total amount of
2494 interest and fees or penalties in the nature of interest from
2495 loans secured by real property.

2496 (b) The amount of net gains (but not less than zero)
2497 from the sale of loans not secured by real property included in
2498 the numerator is determined by multiplying such net gains by a
2499 fraction the numerator of which is the amount included in the
2500 numerator of the receipts factor pursuant to subsection (5) of
2501 this section and the denominator of which is the total amount of
2502 interest and fees or penalties in the nature of interest from
2503 loans not secured by real property.

2504 (7) The numerator of the receipts factor includes interest
2505 and fees or penalties in the nature of interest from credit card
2506 receivables and receipts from fees charged to card holders, such
2507 as annual fees, if the billing address of the card holder is in
2508 this state.

2509 (8) The numerator of the receipts factor includes net gains
2510 (but not less than zero) from the sale of credit card receivables
2511 multiplied by a fraction, the numerator of which is the amount
2512 included in the numerator of the receipts factor pursuant to
2513 subsection (7) of this section and the denominator of which is the
2514 taxpayer's total amount of interest and fees or penalties in the
2515 nature of interest from credit card receivables and fees charged
2516 to card holders.

2517 (9) The numerator of the receipts factor includes all credit
2518 card issuer's reimbursement fees multiplied by a fraction, the

2519 numerator of which is the amount included in the numerator of the
2520 receipts factor pursuant to subsection (7) of this section and the
2521 denominator of which is the taxpayer's total amount of interest
2522 and fees or penalties in the nature of interest from credit card
2523 receivables and fees charged to card holders.

2524 (10) The numerator of the receipts factor includes receipts
2525 from merchant discount if the commercial domicile of the merchant
2526 is in this state. Such receipts shall be computed net of any
2527 cardholder charge backs, but shall not be reduced by any
2528 interchange transaction fees or by any issuer's reimbursement fees
2529 paid to another for charges made by its card holders.

2530 (11) (a) (i) The numerator of the receipts factor includes
2531 loan servicing fees derived from loans secured by real property
2532 multiplied by a fraction the numerator of which is the amount
2533 included in the numerator of the receipts factor pursuant to
2534 subsection (4) of this section and the denominator of which is the
2535 total amount of interest and fees or penalties in the nature of
2536 interest from loans secured by real property.

2537 (ii) The numerator of the receipts factor includes
2538 loan servicing fees derived from loans not secured by real
2539 property multiplied by a fraction the numerator of which is the
2540 amount included in the numerator of the receipts factor pursuant
2541 to subsection (5) of this section and the denominator of which is
2542 the total amount of interest and fees or penalties in the nature
2543 of interest and fees or penalties in the nature of interest from
2544 loans not secured by real property.

2545 (b) In circumstances in which the taxpayer receives
2546 loan servicing fees for servicing either the secured or the
2547 unsecured loans of another, the numerator of the receipts factor
2548 shall include such fees if the borrower is located in this state.

2549 (12) The numerator of the receipts factor includes receipts
2550 from services not otherwise apportioned under this section if the
2551 service is performed in this state. If the service is performed

2552 both within and without this state, the numerator of the receipts
2553 factor includes receipts from services not otherwise apportioned
2554 under this section, if a greater proportion of the income
2555 producing activity is performed in this state based on cost of
2556 performance.

2557 (13) (a) Interest, dividends, net gains (but not less than
2558 zero) and other income from investment assets and activities and
2559 from trading assets and activities shall be included in the
2560 receipts factor. Investment assets and activities and trading
2561 assets and activities include but are not limited to: investment
2562 securities; trading account assets; federal funds; securities
2563 purchased and sold under agreements to resell or repurchase;
2564 options; future contracts; forward contracts; notional principal
2565 contracts such as swaps; equities; and foreign currency
2566 transactions. With respect to the investment and trading assets
2567 and activities described in subparagraphs (i) and (ii) of this
2568 paragraph (a), the receipts factor shall include the amounts
2569 described in such subparagraphs.

2570 (i) The receipts factor shall include the amount
2571 by which interest from federal funds sold and securities purchased
2572 under resale agreements exceeds interest expenses on federal funds
2573 purchased and securities sold under repurchase agreements.

2574 (ii) The receipts factor shall include the amount
2575 by which interest, dividends, gains and other income from trading
2576 assets and activities, including but not limited to assets and
2577 activities in the matched book, in the arbitrage book, and foreign
2578 currency transactions, exceed amounts paid in lieu of interest,
2579 amounts paid in lieu of dividends, and losses from such assets and
2580 activities.

2581 (b) The numerator of the receipts factor includes
2582 interest, dividends, net gains (but not less than zero) and other
2583 income from investment assets and activities and from trading

2584 assets and activities described in paragraph (a) of this
2585 subsection that are attributable to this state.

2586 (i) The amount of interest, dividends, net gains
2587 (but not less than zero) and other income from investment assets
2588 and activities in the investment account to be attributed to this
2589 state and included in the numerator is determined by multiplying
2590 all such income from such assets and activities by a fraction, the
2591 numerator of which is average value of such assets which are
2592 properly assigned to a regular place of business of the taxpayer
2593 within this state and the denominator of which is the average
2594 value of all such assets.

2595 (ii) The amount of interest from federal funds
2596 sold and purchased and from securities purchased under resale
2597 agreements and securities sold under repurchase agreements
2598 attributable to this state and included in the numerator is
2599 determined by multiplying the amount described in subparagraph (i)
2600 of paragraph (a) of this subsection (13) from such funds and such
2601 securities by a fraction, the numerator of which is the average
2602 value of federal funds sold and securities purchased under
2603 agreements to resell which are properly assigned to a regular
2604 place of business of the taxpayer within this state and the
2605 denominator of which is the average value of all such funds and
2606 such securities.

2607 (iii) The amount of interest, dividends, gains and
2608 other income from trading assets and activities, including but not
2609 limited to assets and activities in the matched book, in the
2610 arbitrage book and foreign currency transactions, (but excluding
2611 amounts described in subparagraph (i) or (ii) of this paragraph),
2612 attributable to this state and included in the numerator is
2613 determined by multiplying the amount described in subparagraph
2614 (ii) of paragraph (a) of this subsection (13) by a fraction, the
2615 numerator of which is the average value of such trading assets
2616 which are properly assigned to a regular place of business of the

2617 taxpayer within this state and the denominator of which is the
2618 average value of all such assets.

2619 (iv) For purposes of this paragraph, average value
2620 shall be determined using the rules for determining the average
2621 value of tangible personal property set forth in subsections (3)
2622 and (4) of Section 27-7-24.5.

2623 (c) In lieu of using the method set forth in paragraph
2624 (b) of this subsection (13), the taxpayer may elect, or the
2625 commissioner may require in order to fairly represent the business
2626 activity of the taxpayer in this state, the use of the method set
2627 forth in this paragraph (c).

2628 (i) The amount of interest, dividends, net gains
2629 (but not less than zero) and other income from investment assets
2630 and activities in the investment account to be attributed to this
2631 state and included in the numerator is determined by multiplying
2632 all such income from such assets and activities by a fraction, the
2633 numerator of which is the gross income from such assets and
2634 activities which are properly assigned to a regular place of
2635 business of the taxpayer within the state and the denominator of
2636 which is the gross income from all such assets and activities.

2637 (ii) The amount of interest from federal funds
2638 sold and purchased and from securities purchased under resale
2639 agreements and securities sold under repurchase agreements
2640 attributable to this state and included in the numerator is
2641 determined by multiplying the amount described in subparagraph (i)
2642 of paragraph (a) of this subsection (13) from such funds and such
2643 securities by a fraction, the numerator of which is the gross
2644 income from such funds and such securities which are properly
2645 assigned to a regular place of business and the taxpayer within
2646 this state and the denominator of which is the gross income from
2647 all such funds and such securities.

2648 (iii) The amount of interest, dividends, gains and
2649 other income from trading assets and activities, including but not

2650 limited to assets and activities in the matched book, in the
2651 arbitrage book and foreign currency transactions, but not
2652 excluding amounts described in subparagraphs (i) or (ii) of this
2653 paragraph (c), attributable to this state and included in the
2654 numerator is determined by multiplying the amount described in
2655 subparagraph (ii) of paragraph (a) of this subsection (13) by a
2656 fraction, the numerator of which is the gross income from such
2657 trading assets and activities which are properly assigned to a
2658 regular place of business of the taxpayer within this state and
2659 the denominator of which is the gross income from all such assets
2660 and activities.

2661 (d) If the taxpayer elects or is required by the
2662 commissioner to use the method set forth in paragraph (c) of this
2663 subsection (13), it shall use this method on all subsequent
2664 returns unless the taxpayer receives prior permission from the
2665 commissioner to use, or the commissioner requires a different
2666 method.

2667 (e) The taxpayer shall have the burden of proving that
2668 an investment asset or activity or trading asset or activity was
2669 properly assigned to a regular place of business outside of this
2670 state by demonstrating that the day-to-day decisions regarding the
2671 assets or activity occurred at a regular place of business outside
2672 this state. Where the day-to-day decisions regarding an
2673 investment asset or activity or trading asset or activity occur at
2674 more than one (1) regular place of business and one (1) such
2675 regular place of business is in this state and one (1) such
2676 regular place of business outside this state, such asset or
2677 activity shall be considered to be located at the regular place of
2678 business of the taxpayer where the investment or trading policies
2679 or guidelines with respect to the asset or activity are
2680 established. Unless the taxpayer demonstrates to the contrary,
2681 such policies and guidelines shall be presumed to be established
2682 at the commercial domicile of the taxpayer.

2683 (14) The numerator of the receipts factor includes all other
2684 receipts pursuant to the rules adopted by the commission.

2685 (15) All receipts which would be assigned under this section
2686 to a state in which the taxpayer is not taxable shall be included
2687 in the numerator of the receipts factor, if the taxpayer's
2688 commercial domicile is in this state.

2689 SECTION 6. Section 27-8-3, Mississippi Code of 1972, is
2690 amended as follows:

2691 27-8-3. (1) For purposes of this chapter, the following
2692 terms shall have meanings ascribed below:

2693 (a) "C corporation" means a corporation which is not an
2694 S corporation.

2695 (b) "Code" means the Internal Revenue Code of 1986, as
2696 amended and as applicable to the taxable period; references to
2697 sections of the code shall be deemed to refer to corresponding
2698 provisions of prior and subsequent federal tax laws.

2699 (c) "Income attributable to the state" means items of
2700 income, loss, deduction or credit of the S corporation apportioned
2701 to this state under Section 27-7-23(c)(2) or allocated to this
2702 state under Section 27-7-23(c)(3).

2703 (d) "Income not attributable to the state" means all
2704 items of income, loss, deduction or credit of the S corporation
2705 other than income attributable to the state.

2706 (e) "Post-termination transition period" means that
2707 period defined in Section 1377(b)(1) of the code.

2708 (f) "Pro rata share" means the portion of any item
2709 attributable to an S corporation shareholder for a taxable period
2710 determined in the manner provided in, and subject to any election
2711 made under, Section 1377(a) or 1362(e), as the case may be, of the
2712 code.

2713 (g) "S corporation" means a corporation for which a
2714 valid election under Section 1362(a) of the code is in effect.

2715 (h) "Taxable period" means any taxable year or portion
2716 of a taxable year during which a corporation is an S corporation.

2717 (2) Except as otherwise expressly provided or clearly
2718 appearing from the context, any term used in this chapter shall
2719 have the same meaning as when used in a comparable context in the
2720 code, or in any statute relating to federal income taxes, in
2721 effect for the taxable period. Due consideration shall be given
2722 in the interpretation of this chapter to applicable sections of
2723 the code in effect from time to time and to federal rulings and
2724 regulations interpreting such sections, provided such code,
2725 rulings and regulations do not conflict with the provisions of
2726 this chapter.

2727 SECTION 7. Section 27-13-13, Mississippi Code of 1972, is
2728 amended as follows:

2729 27-13-13. (1) In the case of organizations doing business
2730 both within and without Mississippi, the value of the capital
2731 employed in this state shall be determined by first computing the
2732 ratio between (1) the real and tangible personal property owned in
2733 Mississippi and gross receipts from business carried on in
2734 Mississippi, and (2) the total real and tangible personal property
2735 owned and gross receipts wherever located and from wherever
2736 received. Said ratio then shall be applied to the total capital
2737 stock, surplus, undivided profits and true reserves and the result
2738 of that application shall be the capital employed in this state.
2739 Provided, however, that the amount of the determined capital in
2740 Mississippi shall in no case be less than the assessed value of
2741 the Mississippi property of the organization for the year
2742 preceding the year in which the return is due.

2743 (2) (a) For the purpose of this section, for tax returns
2744 for tax years ending before January 1, 1999, an organization which
2745 uses a formula method of apportionment in making income tax
2746 returns to this state shall determine its gross receipts from
2747 business carried on in Mississippi by applying to total unitary

2748 receipts the ratio achieved, or which would be achieved, by such
2749 formula and adding to the result of such application any
2750 nonunitary Mississippi receipts.

2751 (b) For the purpose of this section, for tax returns
2752 for tax years ending on or after January 1, 1999, the gross
2753 receipts of an organization that is required to use a formula
2754 method of apportionment in making income tax returns to this state
2755 shall be the same (both as to gross receipts from business carried
2756 on in Mississippi and gross receipts wherever located) as the
2757 gross receipts (or sales) used for the receipts or sales factor in
2758 the applicable income tax formula. However, gross receipts from
2759 business carried on in Mississippi, for the purposes of this
2760 section, shall also include any receipts from the taxpayer's
2761 business operations which are not apportioned but rather are
2762 directly allocated or assigned to this state. If the taxpayer is
2763 required to use a formula method of apportionment in making income
2764 tax returns which does not have a receipts or sales factor, then
2765 the receipts factor for the franchise tax formula shall be
2766 determined by regulation of the commission.

2767 (c) For purposes of this section, for tax returns for
2768 tax years ending on or after December 31, 2001, the ratio
2769 described in subsection (1) of this section shall include all
2770 gross receipts as specified in paragraph (b) of this subsection
2771 and where a taxpayer owns a direct or indirect interest in a
2772 flow-through entity, the taxpayer shall include in the ratio its
2773 portion of the flow-through entity's (i) real and tangible
2774 personal property owned in Mississippi and gross receipts from
2775 business carried on in Mississippi, and (ii) total real and
2776 tangible property owned and gross receipts wherever located and
2777 from wherever received. The taxpayer shall include its portion of
2778 the flow-through entity's assessed value of Mississippi property
2779 when determining its assessed value of Mississippi property. A
2780 flow-through entity's real property, tangible personal property,

2781 gross receipts and assessed value of property shall include its
2782 portion of these same items of any flow-through entity in which it
2783 owns a direct or indirect interest. For purposes of this section,
2784 flow-through entity is every form of organization other than a
2785 corporation, association or joint-stock company or other
2786 organization which would qualify for exemption under Section
2787 27-13-63 if the organization were a corporation, association or
2788 joint-stock company.

2789 SECTION 8. This act shall apply to taxable years beginning
2790 on or after January 1, 2001.

2791 SECTION 9. No rules or regulations shall be promulgated or
2792 enforced pursuant to this act unless such rules or regulations
2793 apply equally to each taxpayer affected by this act.

2794 SECTION 10. This act shall take effect and be in force from
2795 and after January 1, 2001.