

By: Senator(s) Nunnelee

To: Finance

SENATE BILL NO. 2037

1 AN ACT TO AMEND SECTION 27-7-9, MISSISSIPPI CODE OF 1972, TO  
2 DELETE THE REQUIREMENT THAT CERTAIN TRANSACTIONS ENTERED INTO BY  
3 CORPORATIONS BE ADJUSTED OR ELIMINATED FOR INCOME TAX PURPOSES; TO  
4 AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN  
5 PROVISIONS REGARDING THE TREATMENT OF CERTAIN INTEREST EXPENSE AS  
6 A BUSINESS DEDUCTION; AND FOR RELATED PURPOSES.

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

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

10 27-7-9. (a) Except as provided in Sections 27-7-95 through  
11 27-7-103, determination of amount of gain or loss.

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

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

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

27 (b) Recognition of gain or loss. Except as otherwise  
28 provided in this section, on the sale or exchange of property the



29 entire amount of the gain or loss, determined under subsection  
30 (a), shall be recognized.

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

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

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

43 (d) Basis of property.

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

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

53 (3) Property acquired by gift. In the case of property  
54 acquired by gift after January 1, 1936, the basis shall be the  
55 same as that which it would have in the hands of the donor or the  
56 last preceding owner by whom it was not acquired by gift. If the  
57 facts necessary to determine such basis are unknown to the donee,  
58 the commissioner shall, if possible, obtain such facts from such  
59 donor, or last preceding owner, or any other person cognizant  
60 thereof. If the commissioner finds it impossible to obtain such  
61 facts, the commissioner shall establish a basis for the property



62 from the best information available. In the case of property  
63 acquired by gift on or before January 1, 1936, the basis for  
64 ascertaining gain or loss from the sale or other disposition  
65 thereof shall be the fair market price or value of such property  
66 at the time of acquisition.

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

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

92 (6) Property acquired in tax-free exchanges. If the  
93 property was acquired upon an exchange described in subsection  
94 (f), the basis shall be the same as in the case of the property



95 exchanged, decreased in the amount of any money received by the  
96 taxpayer and increased in the amount of gain or decreased in the  
97 amount of loss to the taxpayer that was recognized upon such  
98 exchange by the terms of this act. If the property so acquired  
99 consisted in part of the type of property permitted by subsection  
100 (f) to be received without recognition of gain or loss, and in  
101 part of other property, the basis provided in this subsection  
102 shall be allocated between the properties (other than money)  
103 received, and for the purpose of the allocation there shall be  
104 assigned to such other property an amount equivalent to its fair  
105 market value at the date of the exchange.

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

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

123 (9) Property acquired in wash sales. If substantially  
124 identical property was acquired in place of stock or securities  
125 which were sold or disposed of and in respect of which loss was  
126 not allowed as a deduction under Section 27-7-17(d), the basis in  
127 the case of property so acquired shall be the basis in the case of



128 the stock or securities so sold or disposed of, except that, if  
129 the repurchase price was in excess of the sales price, such basis  
130 shall be increased in the amount of the difference, or if the  
131 repurchase price was less than the sales price, such basis shall  
132 be decreased in the amount of the difference.

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

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

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

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

147 (e) Adjustments to basis.

148 (1) In general. In computing the amount of gain or  
149 loss from the sale or other disposition of property, proper  
150 adjustment shall be made for any expenditure, receipt, loss or  
151 other item, properly chargeable to capital account since the basis  
152 date. The cost or other basis of the property shall also be  
153 diminished by the amount of the deductions for exhaustion, wear  
154 and tear, obsolescence, amortization, and depletion, which have  
155 since the acquisition of the property been allowable in respect of  
156 such property whether or not such deductions were claimed by the  
157 taxpayer or formerly allowed. In the case of stock, the basis  
158 shall be diminished by the amount of distributions previously made  
159 in respect to such stock, to the extent provided under this  
160 section.



161           (2) Substituted basis. Whenever it appears that the  
162 basis of the property in the hands of a taxpayer is a substituted  
163 basis, then the adjustments provided in subsection (e)(1) shall be  
164 made after first making in respect of such substituted basis  
165 proper adjustments of a similar nature in respect of the period  
166 during which the property was held by the transferor, donor or  
167 grantor, or during which the other property was held by the person  
168 for whom the basis is to be determined. The term "substituted  
169 basis" as used in this subsection means a basis determined under  
170 any provision of this section or under any corresponding provision  
171 of a prior Income Tax Law, providing that the basis shall be  
172 determined by reference to the basis in the hands of a transferor,  
173 donor or grantor, or, by reference to other property held at any  
174 time by the person for whom the basis is to be determined.

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

176           (1) Exchange solely in kind.

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

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

191           (C) Transfers to corporation controlled by  
192 transferor. No gain or loss shall be recognized if property is  
193 transferred to a corporation by one or more persons solely in



194 exchange for stock or securities in such corporation, and if  
195 immediately after the exchange such person or persons are in  
196 control of the corporation; but in the case of an exchange by two  
197 (2) or more persons, this subsection shall apply only if the  
198 amount of the stock and securities received by each is  
199 substantially in proportion to his interest in the property prior  
200 to the exchange.

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

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

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

223 (4) Distribution of stock on reorganization. If in  
224 pursuance of a plan of reorganization, there is distributed to a  
225 shareholder in a corporation, a party to the reorganization, stock  
226 or securities in such corporation or in another corporation, a



227 party to the reorganization, without the surrender by such  
228 shareholder of stock or securities in such corporation, no gain to  
229 the distributee from the receipt of such stock or securities shall  
230 be recognized.

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

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

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

248 (B) Into money, no gain shall be recognized if  
249 such money is expended, within a period ending two (2) years after  
250 the close of the first taxable year in which any part of the gain  
251 upon the conversion is realized, in the acquisition of other  
252 property similar or related in service or use to the property so  
253 converted, or in the acquisition of control of a corporation  
254 owning such other property, or in the establishment of a  
255 replacement fund, but loss shall be recognized. If any part of  
256 the money is not so expended, the gain shall be recognized to the  
257 extent of the money which is not so expended, regardless of  
258 whether such money is received in one or more taxable years and  
259 regardless of whether or not the money which is not so expended





260 constitutes gain. Provided, gain realized on property which is  
261 compulsorily or involuntarily converted for public use under Title  
262 II, Chapter 27, Mississippi Code of 1972, or any federal law  
263 relating to the involuntary conversion of property for public use  
264 shall not be recognized. Provided further, that gain realized on  
265 property which is voluntarily converted for public use shall not  
266 be recognized after it becomes evident that eminent domain  
267 proceedings are probable.

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

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

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

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



292           (10) Sales of certain interests in financial  
293 institutions domiciled in Mississippi, domestic corporations,  
294 domestic limited partnerships or domestic limited liability  
295 companies.

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

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

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

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

316                   (iii) The depreciation and/or amortization  
317 that has been taken on the assets of the corporation shall be  
318 recaptured and taxed as ordinary income in the same manner as  
319 provided for in Section 1245 of the Internal Revenue Code, as  
320 amended, and any corresponding regulations relating to Section  
321 1245 property. All depreciation and/or amortization shall be  
322 recaptured up to cost prior to any nonrecognition of gains.

323           (g) Reorganization defined. The term "reorganization"  
324 means:



325           (1) A statutory merger or consolidation;

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

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

339           (4) A recapitalization; or

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

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

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

352           (j) Special rules.

353           (1) Liquidation of subsidiaries. A transfer to a  
354 parent corporation from its subsidiary of property distributed in  
355 complete liquidation of the subsidiary shall result in no  
356 recognized gain or loss if the basis of the property in the hands



357 of the parent corporation is the same as it was in the hands of  
358 the subsidiary.

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

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

378           (4) Notwithstanding the other provisions of this  
379 section, a corporation or other entity that is involved in  
380 restructuring, reorganizing, distributing assets or profits, or  
381 changing ownership that results in an adjustment to its asset  
382 basis is required to report a gain in the year such transaction  
383 occurs on any such transaction when the transaction involves  
384 assets owned or used in this state, or otherwise represents assets  
385 owned or used in this state. If a transfer of income or a change  
386 in asset valuation occurs on the tax records of the taxpayer, such  
387 transaction shall result in taxation to this state to the extent  
388 of the transfer of income or change in asset valuation.



389           (5) If a corporation or other entity makes an Internal  
390 Revenue Code Section 338 election, or other similar election under  
391 which the aggregate basis in assets are increased on the tax  
392 records of the taxpayer, then a similar election must also be made  
393 for Mississippi purposes, but the gain must be recognized by the  
394 corporation in which the increase in basis of the assets occurs.  
395 The corporation or other entity is allowed to increase its basis  
396 by the amount of gain recognized. An aggregate write-down of  
397 assets is not allowed. The parent corporation shall recognize the  
398 gain on the disposition of its stock.

399           (6) For state tax purposes, a corporation or other  
400 legal entity is considered separate from its shareholders,  
401 affiliated corporations or other entities. \* \* \* All transactions  
402 entered into by a corporation must be at "arms-length." If  
403 requested by the commissioner, the taxpayer must be able to  
404 substantiate that the transaction occurred at "arms-length." If  
405 not, the transaction may be adjusted to the satisfaction of the  
406 commissioner. For purpose of this subsection, compliance with  
407 federal regulations promulgated under Internal Revenue Code  
408 Section 482, shall constitute "arms-length." The provisions  
409 deleted from this subsection (j) (6) by Senate Bill No. 2037, 2001  
410 Regular Session, shall be deleted retroactively to January 1,  
411 1990, and shall not apply to any transaction (whether occurring  
412 before, on, or after January 1, 1990), except those provisions  
413 shall not be retroactively deleted as to, and shall apply to, a  
414 transaction to the extent those provisions have been applied to  
415 the transaction in a taxable year of the taxpayer that is (A)  
416 subject to a settlement with or decision by the commissioner that  
417 is final and nonappealable as of the date of passage of Senate  
418 Bill No. 2037, 2001 Regular Session, or (B) subject to a judgment  
419 by a court of this state that is final and nonappealable as of the  
420 date of passage of Senate Bill No. 2037, 2001 Regular Session.

421           (k) Sale or exchange of residence.



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

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

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

433           (1) Distributions by corporations.

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

448           (2) Source of distributions. For the purposes of this  
449 act, every distribution is made out of earnings or profits to the  
450 extent thereof, and from the most recently accumulated earnings  
451 and profits. Any earnings or profit accumulated, or increase in  
452 value of property acquired, before March 16, 1912, may be  
453 distributed exempt from tax (after the earnings and profits  
454 accumulated after March 16, 1912, have been distributed), but any



455 such tax-free distribution shall be applied against and reduce the  
456 basis of the stock provided in subsection (d).

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

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

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

480 (6) Cancellation or redemption of stock. If a  
481 corporation cancels or redeems its stock (whether or not such  
482 stock was issued as a stock dividend) at such time and in such  
483 manner as to make the distribution and cancellation or redemption  
484 in whole or in part essentially equivalent to the distribution of  
485 a taxable dividend, the amount so distributed in redemption or  
486 cancellation of the stock, to the extent that it represents a



487 distribution of earnings or profits accumulated after March 16,  
488 1912, shall be treated as a taxable dividend.

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

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

505 SECTION 2. Section 27-7-17, Mississippi Code of 1972, is  
506 amended as follows:

507 27-7-17. In computing taxable income, there shall be allowed  
508 as deductions:

509 (1) **Business deductions.**

510 (a) Business expenses. All the ordinary and necessary  
511 expenses paid or incurred during the taxable year in carrying on  
512 any trade or business, including a reasonable allowance for  
513 salaries or other compensation for personal services actually  
514 rendered; nonreimbursable traveling expenses incident to current  
515 employment, including a reasonable amount expended for meals and  
516 lodging while away from home in the pursuit of a trade or  
517 business; and rentals or other payments required to be made as a  
518 condition of the continued use or possession, for purposes of the  
519 trade or business of property to which the taxpayer has not taken





520 or is not taking title or in which he had no equity. Expense  
521 incurred in connection with earning and distributing nontaxable  
522 income is not an allowable deduction. Limitations on  
523 entertainment expenses shall conform to the provisions of the  
524 Internal Revenue Code of 1986.

525 (b) Interest. All interest paid or accrued during the  
526 taxable year on business indebtedness, except interest upon the  
527 indebtedness for the purchase of tax-free bonds, or any stocks,  
528 the dividends from which are nontaxable under the provisions of  
529 this article; provided, however, in the case of securities  
530 dealers, interest payments or accruals on loans, the proceeds of  
531 which are used to purchase tax-exempt securities, shall be  
532 deductible if income from otherwise tax-free securities is  
533 reported as income. Investment interest expense shall be limited  
534 to investment income. \* \* \* For the purposes of this paragraph,  
535 the phrase "interest upon the indebtedness for the purchase of  
536 tax-free bonds" applies only to the indebtedness incurred for the  
537 purpose of directly purchasing tax-free bonds and does not apply  
538 to any other indebtedness incurred in the regular course of the  
539 taxpayer's business. Any corporation, association, organization  
540 or other entity taxable under Section 27-7-23(c) shall allocate  
541 interest expense as provided in Section 27-7-23(c)(4)(H). The  
542 provisions deleted from this subsection (1)(b) by Senate Bill No.  
543 2037, 2001 Regular Session, shall be deleted retroactively to  
544 January 1, 1990, and shall not apply to any transaction (whether  
545 occurring before, on, or after January 1, 1990), except those  
546 provisions shall not be retroactively deleted as to, and shall  
547 apply to, a transaction to the extent those provisions have been  
548 applied to the transaction in a taxable year of the taxpayer that  
549 is (i) subject to a settlement with or decision by the  
550 commissioner that is final and nonappealable as of the date of  
551 passage of Senate Bill No. 2037, 2001 Regular Session, or (ii)  
552 subject to a judgment by a court of this state that is final and



553 nonappealable as of the date of passage of Senate Bill No. 2037,  
554 2001 Regular Session.

555 (c) Taxes. Taxes paid or accrued within the taxable  
556 year, except state and federal income taxes, excise taxes based on  
557 or measured by net income, estate and inheritance taxes, gift  
558 taxes, cigar and cigarette taxes, gasoline taxes, and sales and  
559 use taxes unless incurred as an item of expense in a trade or  
560 business or in the production of taxable income. In the case of  
561 an individual, taxes permitted as an itemized deduction under the  
562 provisions of subsection (2)(a) of this section are to be claimed  
563 thereunder.

564 (d) Business losses.

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

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

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

577 (f) Depreciation. A reasonable allowance for  
578 exhaustion, wear and tear of property used in the trade or  
579 business, or rental property, and depreciation upon buildings  
580 based upon their reasonable value as of March 16, 1912, if  
581 acquired prior thereto, and upon cost if acquired subsequent to  
582 that date.

583 (g) Depletion. In the case of mines, oil and gas  
584 wells, other natural deposits and timber, a reasonable allowance  
585 for depletion and for depreciation of improvements, based upon



586 cost, including cost of development, not otherwise deducted, or  
587 fair market value as of March 16, 1912, if acquired prior to that  
588 date, such allowance to be made upon regulations prescribed by the  
589 commissioner, with the approval of the Governor.

590 (h) Contributions or gifts. Except as otherwise  
591 provided in subsection (2)(a) of this section for individuals,  
592 contributions or gifts made by corporations within the taxable  
593 year to corporations, organizations, associations or institutions,  
594 including Community Chest funds, foundations and trusts created  
595 solely and exclusively for religious, charitable, scientific or  
596 educational purposes, or for the prevention of cruelty to children  
597 or animals, no part of the net earnings of which inure to the  
598 benefit of any private stockholder or individual. This deduction  
599 shall be allowed in an amount not to exceed twenty percent (20%)  
600 of the net income. Such contributions or gifts shall be allowable  
601 as deductions only if verified under rules and regulations  
602 prescribed by the commissioner, with the approval of the Governor.  
603 Contributions made in any form other than cash shall be allowed as  
604 a deduction, subject to the limitations herein provided, in an  
605 amount equal to the actual market value of the contributions at  
606 the time the contribution is actually made and consummated.

607 (i) Reserve funds - insurance companies. In the case  
608 of insurance companies the net additions required by law to be  
609 made within the taxable year to reserve funds when such reserve  
610 funds are maintained for the purpose of liquidating policies at  
611 maturity.

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

615 (k) Contributions to employee pension plans.  
616 Contributions made by an employer to a plan or a trust forming  
617 part of a pension plan, stock bonus plan, disability or  
618 death-benefit plan, or profit-sharing plan of such employer for



619 the exclusive benefit of some or all of his, their, or its  
620 employees, or their beneficiaries, shall be deductible from his,  
621 their, or its income only to the extent that, and for the taxable  
622 year in which, the contribution is deductible for federal income  
623 tax purposes under the Internal Revenue Code of 1986 and any other  
624 provisions of similar purport in the Internal Revenue Laws of the  
625 United States, and the rules, regulations, rulings and  
626 determinations promulgated thereunder, provided that:

627 (i) The plan or trust be irrevocable.

628 (ii) The plan or trust constitute a part of a  
629 pension plan, stock bonus plan, disability or death-benefit plan,  
630 or profit-sharing plan for the exclusive benefit of some or all of  
631 the employer's employees and/or officers, or their beneficiaries,  
632 for the purpose of distributing the corpus and income of the plan  
633 or trust to such employees and/or officers, or their  
634 beneficiaries.

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

638 Contributions to all plans or to all trusts of real or  
639 personal property (or real and personal property combined) or to  
640 insured plans created under a retirement plan for which provision  
641 has been made under the laws of the United States of America,  
642 making such contributions deductible from income for federal  
643 income tax purposes, shall be deductible only to the same extent  
644 under the Income Tax Laws of the State of Mississippi.

645 (1) Net operating loss carrybacks and carryovers. A  
646 net operating loss for any taxable year ending after December 31,  
647 1993, and taxable years thereafter, shall be a net operating loss  
648 carryback to each of the three (3) taxable years preceding the  
649 taxable year of the loss. If the net operating loss for any  
650 taxable year is not exhausted by carrybacks to the three (3)  
651 taxable years preceding the taxable year of the loss, then there



652 shall be a net operating loss carryover to each of the fifteen  
653 (15) taxable years following the taxable year of the loss  
654 beginning with any taxable year after December 31, 1991.

655 For any taxable year ending after December 31, 1997, the  
656 period for net operating loss carrybacks and net operating loss  
657 carryovers shall be the same as those established by the Internal  
658 Revenue Code and the rules, regulations, rulings and  
659 determinations promulgated thereunder.

660 The term "net operating loss," for the purposes of this  
661 paragraph, shall be the excess of the deductions allowed over the  
662 gross income; provided, however, the following deductions shall  
663 not be allowed in computing same:

664 (i) No net operating loss deduction shall be  
665 allowed.

666 (ii) No personal exemption deduction shall be  
667 allowed.

668 (iii) Allowable deductions which are not  
669 attributable to taxpayer's trade or business shall be allowed only  
670 to the extent of the amount of gross income not derived from such  
671 trade or business.

672 Any taxpayer entitled to a carryback period as provided by  
673 this paragraph may elect to relinquish the entire carryback period  
674 with respect to a net operating loss for any taxable year ending  
675 after December 31, 1991. The election shall be made in the manner  
676 prescribed by the State Tax Commission and shall be made by the  
677 due date, including extensions of time, for filing the taxpayer's  
678 return for the taxable year of the net operating loss for which  
679 the election is to be in effect. The election, once made for any  
680 taxable year, shall be irrevocable for that taxable year.

681 (m) Amortization of pollution or environmental control  
682 facilities. Allowance of deduction. Every taxpayer, at his  
683 election, shall be entitled to a deduction for pollution or  
684 environmental control facilities to the same extent as that



685 allowed under the Internal Revenue Code and the rules,  
686 regulations, rulings and determinations promulgated thereunder.

687 (n) Dividend distributions - real estate investment  
688 trusts. "Real estate investment trust" (hereinafter referred to  
689 as REIT) shall have the meaning ascribed to such term in Section  
690 856 of the federal Internal Revenue Code of 1986, as amended. A  
691 REIT is allowed a dividend distributed deduction if the dividend  
692 distributions meet the requirements of Section 857 or are  
693 otherwise deductible under Section 858 or 860, federal Internal  
694 Revenue Code of 1986, as amended. In addition:

695 (i) A dividend distributed deduction shall only be  
696 allowed for dividends paid by a publicly traded REIT. A qualified  
697 REIT subsidiary shall be allowed a dividend distributed deduction  
698 if its owner is a publicly traded REIT.

699 (ii) Income generated from real estate contributed  
700 or sold to a REIT by a shareholder or related party shall not give  
701 rise to a dividend distributed deduction, unless the shareholder  
702 or related party would have received the dividend distributed  
703 deduction under this chapter.

704 (iii) A holding corporation receiving a dividend  
705 from a REIT shall not be allowed the deduction in Section  
706 27-7-15(4)(t).

707 (iv) Any REIT not allowed the dividend distributed  
708 deduction in the federal Internal Revenue Code of 1986, as  
709 amended, shall not be allowed a dividend distributed deduction  
710 under this chapter.

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

715 (o) Contributions to College Savings Trust Fund  
716 Accounts. Contributions or payments to a Mississippi Affordable  
717 College Savings Program account are deductible as provided under



718 Section 37-155-113. Payments made under a prepaid tuition  
719 contract entered into under the Mississippi Prepaid Affordable  
720 College Tuition Program are deductible as provided under Section  
721 37-155-17.

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

723 (a) The amount allowable for individual nonbusiness  
724 itemized deductions for federal income tax purposes, except the  
725 deduction for state income taxes paid, where the individual is  
726 eligible to elect, for the taxable year, to itemize deductions on  
727 his federal return; or

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

733 (i) Three Thousand Four Hundred Dollars  
734 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred  
735 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand  
736 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter  
737 in the case of married individuals filing a joint or combined  
738 return;

739 (ii) One Thousand Seven Hundred Dollars  
740 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred  
741 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand  
742 Three Hundred Dollars (\$2,300.00) for each calendar year  
743 thereafter in the case of married individuals filing separate  
744 returns;

745 (iii) Three Thousand Four Hundred Dollars  
746 (\$3,400.00) in the case of a head of family; or

747 (iv) Two Thousand Three Hundred Dollars  
748 (\$2,300.00) in the case of an individual who is not married.

749 In the case of a husband and wife living together, having  
750 separate incomes, and filing combined returns, the standard



751 deduction authorized may be divided in any manner they choose. In  
752 the case of separate returns by a husband and wife, the standard  
753 deduction shall not be allowed to either if the taxable income of  
754 one of the spouses is determined without regard to the standard  
755 deduction.

756 (c) A nonresident individual shall be allowed the same  
757 individual nonbusiness deductions as are authorized for resident  
758 individuals in paragraph (a) or (b) of this subsection; however,  
759 the nonresident individual is entitled only to that proportion of  
760 the individual nonbusiness deductions as his net income from  
761 sources within the State of Mississippi bears to his total or  
762 entire net income from all sources.

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

765 SECTION 3. (1) The same or similar principles to the  
766 provisions deleted from Section 27-7-9(j)(6) by Senate Bill No.  
767 2037, 2001 Regular Session, shall not be utilized to any  
768 transaction (whether occurring before, on, or after January 1,  
769 1990) in making any adjustments or eliminations to arrive at  
770 taxable income to this state (such prohibited adjustments or  
771 eliminations including, but not being limited to, disallowing any  
772 interest expense deduction or reattributing any indebtedness  
773 between or among persons), except those same or similar principles  
774 may be so utilized to a transaction to the extent such principles  
775 have been so utilized to the transaction in a taxable year of the  
776 taxpayer that is (a) subject to a settlement with or a decision by  
777 the commissioner that is final and nonappealable as of the date of  
778 passage of Senate Bill No. 2037, 2001 Regular Session, or (b)  
779 subject to a judgment by a court of this state that is final and  
780 nonappealable as of the date of passage of Senate Bill No. 2037,  
781 2001 Regular Session.

782 (2) The same or similar principles to the provisions deleted  
783 from Section 27-7-17(1)(b) by Senate Bill No. 2037, 2001 Regular





784 Session, shall not be utilized to any transaction (whether  
785 occurring before, on, or after January 1, 1990) in disallowing any  
786 interest expense deduction or in reattributing any indebtedness  
787 between or among persons, except those same or similar principles  
788 may be so utilized to a transaction to the extent such principles  
789 have been so utilized to the transaction in a taxable year of the  
790 taxpayer that is (a) subject to a settlement with or a decision by  
791 the commissioner that is final and nonappealable as of the date of  
792 passage of Senate Bill No. 2037, 2001 Regular Session, or (b)  
793 subject to a judgment by a court of this state that is final and  
794 nonappealable as of the date of passage of Senate Bill No. 2037,  
795 2001 Regular Session.

796 SECTION 4. Nothing in this act shall affect any applicable  
797 statute of limitations on the time for the assessment or refund of  
798 any income tax to this state or for the determination of any  
799 taxable income to this state.

800 SECTION 5. Section 3 of this act shall be codified as a  
801 separate code section in Chapter 7, Title 27, Mississippi Code of  
802 1972.

803 SECTION 6. If any section, paragraph, sentence, clause,  
804 phrase or any part of this act is declared to be unconstitutional  
805 or void, or if for any reason is declared to be invalid or of no  
806 effect, the remaining sections, paragraphs, sentences, clauses,  
807 phrases or parts thereof shall be in no manner affected thereby  
808 but shall remain in full force and effect.

809 SECTION 7. This act shall take effect and be in force from  
810 and after its passage.

