SENATE BILL NO. 2044

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

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

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

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

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

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

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

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

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

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

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

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

(d) **Basis of property.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) **Adjustments to basis.**

(1) **In general.** In computing the amount of gain or
loss from the sale or other disposition of property, proper
adjustment shall be made for any expenditure, receipt, loss or
other item, properly chargeable to capital account since the basis
date. The cost or other basis of the property shall also be
diminished by the amount of the deductions for exhaustion, wear
and tear, obsolescence, amortization and depletion, which have
since the acquisition of the property been allowable in respect of
such property whether or not such deductions were claimed by the
taxpayer or formerly allowed. In the case of stock, the basis
shall be diminished by the amount of distributions previously made
in respect to such stock, to the extent provided under this
section.
(2) **Substituted basis.** Whenever it appears that the basis of the property in the hands of a taxpayer is a substituted basis, then the adjustments provided in subsection (e)(1) shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor or grantor, or during which the other property was held by the person for whom the basis is to be determined. The term "substituted basis" as used in this subsection means a basis determined under any provision of this section or under any corresponding provision of a prior Income Tax Law, providing that the basis shall be determined by reference to the basis in the hands of a transferor, donor or grantor, or, by reference to other property held at any time by the person for whom the basis is to be determined.

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

(1) **Exchange solely in kind.**

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

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

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

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

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

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

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

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

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

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

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

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

(7) **Property exchanged treated as equivalent of cash.**

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

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

(9) **Organization of a corporation.** In the case of the organization of a corporation, the stock and securities received shall be considered to take the place of property transferred therefor, and no gain or loss shall be deemed to arise therefrom.
(10) Sales of certain interests in financial institutions domiciled in Mississippi, domestic corporations, domestic limited partnerships or domestic limited liability companies.

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

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

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

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

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

(g) Reorganization defined. The term "reorganization" means:
(1) A statutory merger or consolidation;

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

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

(4) A recapitalization; or

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

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

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

(j) Special rules.

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

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

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

(4) Notwithstanding the other provisions of this
section, a corporation or other entity that is involved in
restructuring, reorganizing, distributing assets or profits, or
changing ownership that results in an adjustment to its asset
basis is required to report a gain in the year such transaction
occurs on any such transaction when the transaction involves
assets owned or used in this state, or otherwise represents assets
owned or used in this state. If a transfer of income or a change
in asset valuation occurs on the tax records of the taxpayer, such
transaction shall result in taxation to this state to the extent
of the transfer of income or change in asset valuation.
(5) If a corporation or other entity makes an Internal Revenue Code Section 338 election, or other similar election under which the aggregate basis in assets are increased on the tax records of the taxpayer, then a similar election must also be made for Mississippi purposes, but the gain must be recognized by the corporation in which the increase in basis of the assets occurs. The corporation or other entity is allowed to increase its basis by the amount of gain recognized. An aggregate write-down of assets is not allowed. The parent corporation shall recognize the gain on the disposition of its stock.

(6) For state tax purposes, a corporation or other legal entity is considered separate from its shareholders, affiliated corporations or other entities. * * * All transactions entered into by a corporation must be at "arms-length." If requested by the commissioner, the taxpayer must be able to substantiate that the transaction occurred at "arms-length." If not, the transaction may be adjusted to the satisfaction of the commissioner. The provisions deleted from this subsection (j)(6) by Senate Bill No. 2044, 2003 Regular Session, shall be deleted retroactively to January 1, 1990, and shall not apply to any transaction (whether occurring before, on, or after January 1, 1990), except those provisions shall not be retroactively deleted as to, and shall apply to, a transaction to the extent those provisions have been applied to the transaction in a taxable year of the taxpayer that is (A) subject to a settlement with or decision by the commissioner that is final and nonappealable as of the date of passage of Senate Bill No. 2044, 2003 Regular Session, or (B) subject to a judgment by a court of this state that is final and nonappealable as of the date of passage of Senate Bill No. 2044, 2003 Regular Session. In determining whether the transaction occurred at arms-length, the commissioner shall consider the following:
(A) Whether the transaction is in compliance with the federal regulations promulgated under Internal Revenue Code Section 482;

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

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

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

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

(k) **Sale or exchange of residence.**

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

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

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

(l) **Distributions by corporations.**

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

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

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

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

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

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

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

(8) **Distributions of stock pursuant to order enforcing
the Antitrust Laws.** Any distribution of stock which is made
pursuant to the order of any court enforcing the Antitrust Laws of
the United States, or of any state, shall be a distribution which
is not out of earnings and profits of the distributing
corporation, but the value of the stock so distributed shall be
applied against and reduce the basis of the stock of the
distributing corporation provided in subsection (d), and if in
excess of such basis, such excess shall be taxable in the same
manner as a gain from the sale or exchange of property.
520 [From and after July 1, 2003, this section shall read as follows:]
521
522 27-7-9. (a) Except as provided in Sections 27-7-95 through 27-7-103, determination of amount of gain or loss.
523
524  (1) Computation of gain or loss. The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in subsection (c) for determining gain, and the loss shall be the excess of the adjusted basis provided in subsection (c) for determining loss over the amount realized.
525
526  (2) Amount realized. The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.
527
528  (3) Installment sales. Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment representing gain or profit in the year in which such payment is received.
529
530  (b) Recognition of gain or loss. Except as otherwise provided in this section, on the sale or exchange of property the entire amount of the gain or loss, determined under subsection (a), shall be recognized.
531
532  (c) Adjusted basis for determining gain or loss.
533
534  (1) In general. The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (d) adjusted as provided in subsection (e).
535
536  (2) Bargain sale to a charitable organization. If a deduction is allowed under Section 27-7-17 (relating to charitable contributions) by reason of a sale, then the adjusted basis for determining the gain from such sale shall be that portion of the adjusted basis which bears the same ratio to the adjusted basis as
the amount realized bears to the fair market value of the
property.

(d) Basis of property.

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

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

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

(4) Property acquired by bequests, devises and
inheritance. If personal property was acquired by specific
bequest, or if real property was acquired by general or specific
devise or by intestacy, the basis shall be the fair market value
of the property at the time of the death of the decedent. If the
property was acquired by the decedent's estate from the decedent,
the basis in the hands of the estate shall be the fair market
value of the property at the time of the death of the decedent.

In all other cases, if the property was acquired either by will or
by intestacy, the basis shall be the fair market value of the
property at the time of the distribution to the taxpayer. In the
case of property transferred in trust to pay the income for life
to or upon the order or direction of the grantor, with the right
reserved to the grantor at all times prior to his death to revoke
the trust, the basis of such property in the hands of the persons
entitled under the terms of the trust instrument to the property
after the grantor’s death shall, after such death, be the same as
if the trust instrument had been a will executed on the day of the
grantor’s death.

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

(6) **Property acquired in tax-free exchanges.** If the
property was acquired upon an exchange described in subsection
(f), the basis shall be the same as in the case of the property
exchanged, decreased in the amount of any money received by the
taxpayer and increased in the amount of gain or decreased in the
amount of loss to the taxpayer that was recognized upon such
exchange by the terms of this act. If the property so acquired
consisted in part of the type of property permitted by subsection
(f) to be received without recognition of gain or loss, and in
part of other property, the basis provided in this subsection
shall be allocated between the properties (other than money)
received, and for the purpose of the allocation there shall be
assigned to such other property an amount equivalent to its fair
market value at the date of the exchange.
(7) **Property acquired in tax-free distribution.** If the property consists of stock or securities distributed to a taxpayer in connection with a transaction described in subsection (f), the basis in the case of the stock in respect of which the distribution was made shall be apportioned, under rules and regulations prescribed by the commissioner, between such stock and the stock or securities distributed.

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

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

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

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

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

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

(e) Adjustments to basis.

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

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

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determined by reference to the basis in the hands of a transferor, donor or grantor, or, by reference to other property held at any time by the person for whom the basis is to be determined.

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

(1) Exchange solely in kind.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) A statutory merger or consolidation;

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

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

(4) A recapitalization; or

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

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

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

(j) **Special rules.**

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

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

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

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

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

(6) For state tax purposes, a corporation or other
legal entity is considered separate from its shareholders,
affiliated corporations or other entities. * * * All transactions
entered into by a corporation must be at "arms-length." If
requested by the commissioner, the taxpayer must be able to substantiate that the transaction occurred at "arms-length." If not, the transaction may be adjusted to the satisfaction of the commissioner. For purposes of this subsection, compliance with federal regulations promulgated under Internal Revenue Code Section 482, shall constitute "arms-length." The provisions deleted from this subsection (j)(6) by Senate Bill No. 2044, 2003 Regular Session, shall be deleted retroactively to January 1, 1990, and shall not apply to any transaction (whether occurring before, on, or after January 1, 1990), except those provisions shall not be retroactively deleted as to, and shall apply to, a transaction to the extent those provisions have been applied to the transaction in a taxable year of the taxpayer that is (A) subject to a settlement with or decision by the commissioner that is final and nonappealable as of the date of passage of Senate Bill No. 2044, 2003 Regular Session, or (B) subject to a judgment by a court of this state that is final and nonappealable as of the date of passage of Senate Bill No. 2044, 2003 Regular Session.

(k) Sale or exchange of residence.

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

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

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

(1) Distributions by corporations.

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

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

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

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

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

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

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

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

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

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

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

(1) Business deductions.

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

(b) Interest. All interest paid or accrued during the
taxable year on business indebtedness, except interest upon the
indebtedness for the purchase of tax-free bonds, or any stocks,
the dividends from which are nontaxable under the provisions of
this article; provided, however, in the case of securities
dealers, interest payments or accruals on loans, the proceeds of
which are used to purchase tax-exempt securities, shall be
deductible if income from otherwise tax-free securities is
investment interest expense shall be limited to investment income. For the purposes of this paragraph, the phrase "interest upon the indebtedness for the purchase of tax-free bonds" applies only to the indebtedness incurred for the purpose of directly purchasing tax-free bonds and does not apply to any other indebtedness incurred in the regular course of the taxpayer's business. Any corporation, association, organization or other entity taxable under Section 27-7-23(c) shall allocate interest expense as provided in Section 27-7-23(c)(3)(I). The provisions deleted from this paragraph (1)(b) by Senate Bill No. 2044, 2003 Regular Session, shall be deleted retroactively to January 1, 1990, and shall not apply to any transaction (whether occurring before, on, or after January 1, 1990), except those provisions shall not be retroactively deleted as to, and shall apply to, a transaction to the extent those provisions have been applied to the transaction in a taxable year of the taxpayer that is (i) subject to a settlement with or decision by the commissioner that is final and nonappealable as of the date of passage of Senate Bill No. 2044, 2003 Regular Session, or (ii) subject to a judgment by a court of this state that is final and nonappealable as of the date of passage of Senate Bill No. 2044, 2003 Regular Session.

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

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

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

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

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

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

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

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

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

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

(i) The plan or trust be irrevocable.

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

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

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

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

For any taxable year ending after December 31, 1997, the period for net operating loss carrybacks and net operating loss carryovers shall be the same as those established by the Internal Revenue Code and the rules, regulations, rulings and determinations promulgated thereunder as in effect at the taxable year end or on December 31, 2000, whichever is earlier.

A net operating loss for any taxable year ending after December 31, 2001, and taxable years thereafter, shall be a net operating loss carryback to each of the two (2) taxable years.
preceding the taxable year of the loss. If the net operating loss
for any taxable year is not exhausted by carrybacks to the two (2)
taxable years preceding the taxable year of the loss, then there
shall be a net operating loss carryover to each of the twenty (20)
taxable years following the taxable year of the loss beginning
with any taxable year after the taxable year of the loss.

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

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

(ii) No personal exemption deduction shall be
allowed.

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

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

(m) Amortization of pollution or environmental control
facilities. Allowance of deduction. Every taxpayer, at his
election, shall be entitled to a deduction for pollution or
environmental control facilities to the same extent as that
allowed under the Internal Revenue Code and the rules,
regulations, rulings and determinations promulgated thereunder.
(n) **Dividend distributions - real estate investment trusts.** "Real estate investment trust" (hereinafter referred to as REIT) shall have the meaning ascribed to such term in Section 856 of the federal Internal Revenue Code of 1986, as amended. A REIT is allowed a dividend distributed deduction if the dividend distributions meet the requirements of Section 857 or are otherwise deductible under Section 858 or 860, federal Internal Revenue Code of 1986, as amended. In addition:

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

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

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

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

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

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

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

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

(i) "Intangible expenses and costs" include:

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

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

3. Royalty, patent, technical and copyright fees;

4. Licensing fees; and

5. Other similar expenses and costs.

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

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

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

(v) "Related entity" means:

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

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

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

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

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

(c) The adjustments required by this subsection shall not apply to such portion of interest expenses and costs and
intangible expenses and costs that the taxpayer can establish

meets one (1) of the following:

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

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

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

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

(3) **Individual nonbusiness deductions.**

(a) The amount allowable for individual nonbusiness
itemized deductions for federal income tax purposes where the
individual is eligible to elect, for the taxable year, to itemize
deductions on his federal return except the following:

(i) The deduction for state income taxes paid;

(ii) The deduction for gaming losses from gaming
establishments;

(iii) The deduction for taxes collected by
licensed gaming establishments pursuant to Section 27-7-901;

(iv) The deduction for taxes collected by gaming
establishments pursuant to Section 27-7-903.
(b) In lieu of the individual nonbusiness itemized deductions authorized in paragraph (a), for all purposes other than ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, an optional standard deduction of:

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

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

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

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

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

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

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

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

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

(1) **Business deductions.**

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

(b) **Interest.** All interest paid or accrued during the taxable year on business indebtedness, except interest upon the indebtedness for the purchase of tax-free bonds, or any stocks, the dividends from which are nontaxable under the provisions of this article; provided, however, in the case of securities dealers, interest payments or accruals on loans, the proceeds of which are used to purchase tax-exempt securities, shall be deductible if income from otherwise tax-free securities is reported as income. Investment interest expense shall be limited.
to investment income. *** For the purposes of this paragraph, the phrase "interest upon the indebtedness for the purchase of tax-free bonds" applies only to the indebtedness incurred for the purpose of directly purchasing tax-free bonds and does not apply to any other indebtedness incurred in the regular course of the taxpayer's business. Any corporation, association, organization or other entity taxable under Section 27-7-23(c) shall allocate interest expense as provided in Section 27-7-23(c)(4)(H). The provisions deleted from this paragraph (1)(b) by Senate Bill No. 2044, 2003 Regular Session, shall be deleted retroactively to January 1, 1990, and shall not apply to any transaction (whether occurring before, on, or after January 1, 1990), except those provisions shall not be retroactively deleted as to, and shall apply to, a transaction to the extent those provisions have been applied to the transaction in a taxable year of the taxpayer that is (i) subject to a settlement with or decision by the commissioner that is final and nonappealable as of the date of passage of Senate Bill No. 2044, 2003 Regular Session, or (ii) subject to a judgment by a court of this state that is final and nonappealable as of the date of passage of Senate Bill No. 2044, 2003 Regular Session.

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

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

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

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

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

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

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

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

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

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

(i) The plan or trust be irrevocable.

(ii) The plan or trust constitute a part of a pension plan, stock bonus plan, disability or death-benefit plan, or profit-sharing plan for the exclusive benefit of some or all of his, their, or its employees, or their beneficiaries, shall be deductible from his, their, or its income only to the extent that, and for the taxable year in which, the contribution is deductible for federal income tax purposes under the Internal Revenue Code of 1986 and any other provisions of similar purport in the Internal Revenue Laws of the United States, and the rules, regulations, rulings and determinations promulgated thereunder, provided that:
the employer's employees and/or officers, or their beneficiaries, for the purpose of distributing the corpus and income of the plan or trust to such employees and/or officers, or their beneficiaries.

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

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

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

For any taxable year ending after December 31, 1997, the period for net operating loss carrybacks and net operating loss carryovers shall be the same as those established by the Internal Revenue Code and the rules, regulations, rulings and determinations promulgated thereunder as in effect at the taxable year end or on December 31, 2000, whichever is earlier.

A net operating loss for any taxable year ending after December 31, 2001, and taxable years thereafter, shall be a net operating loss carryback to each of the two (2) taxable years
preceding the taxable year of the loss. If the net operating loss for any taxable year is not exhausted by carrybacks to the two (2) taxable years preceding the taxable year of the loss, then there shall be a net operating loss carryover to each of the twenty (20) taxable years following the taxable year of the loss beginning with any taxable year after the taxable year of the loss.

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

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

(ii) No personal exemption deduction shall be allowed.

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

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

(m) **Amortization of pollution or environmental control facilities.** Allowance of deduction. Every taxpayer, at his election, shall be entitled to a deduction for pollution or environmental control facilities to the same extent as that allowed under the Internal Revenue Code and the rules, regulations, rulings and determinations promulgated thereunder.
(n) Dividend distributions - real estate investment trusts. "Real estate investment trust" (hereinafter referred to as REIT) shall have the meaning ascribed to such term in Section 856 of the federal Internal Revenue Code of 1986, as amended. A REIT is allowed a dividend distributed deduction if the dividend distributions meet the requirements of Section 857 or are otherwise deductible under Section 858 or 860, federal Internal Revenue Code of 1986, as amended. In addition:

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

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

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

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

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

(o) Contributions to college savings trust fund accounts. Contributions or payments to a Mississippi Affordable College Savings Program account are deductible as provided under Section 37-155-113. Payments made under a prepaid tuition contract entered into under the Mississippi Prepaid Affordable
(2) Individual nonbusiness deductions.

(a) The amount allowable for individual nonbusiness itemized deductions for federal income tax purposes where the individual is eligible to elect, for the taxable year, to itemize deductions on his federal return except the following:

(i) The deduction for state income taxes paid;

(ii) The deduction for gaming losses from gaming establishments;

(iii) The deduction for taxes collected by licensed gaming establishments pursuant to Section 27-7-901;

(iv) The deduction for taxes collected by gaming establishments pursuant to Section 27-7-903.

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

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

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

(iii) Three Thousand Four Hundred Dollars ($3,400.00) in the case of a head of family; or
ST: Income tax; revise certain provisions regarding gains and losses and business deductions.

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

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

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

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

SECTION 3. This act shall take effect and be in force from and after its passage.