

By: Senator(s) Nunnelee

To: Finance

SENATE BILL NO. 2044

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

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

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

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

11 27-7-9. (a) Except as provided in Sections 27-7-95 through  
12 27-7-103, determination of amount of gain or loss.

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

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

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

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



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

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

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

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

44 (d) **Basis of property.**

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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

148           (e) **Adjustments to basis.**

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



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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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





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

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

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

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

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



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

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

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

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

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

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

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



- 326 (1) A statutory merger or consolidation;
- 327 (2) The acquisition by one (1) corporation, in exchange  
328 solely for all or a part of its voting stock (or in exchange  
329 solely for all or a part of the voting stock of a corporation  
330 which is in control of the acquiring corporation), of stock of  
331 another corporation if, immediately after the acquisition, the  
332 acquiring corporation has control of such other corporation, or of  
333 substantially all the properties of another corporation;
- 334 (3) A transfer by a corporation of all or a part of its  
335 assets to another corporation if immediately after the transfer  
336 the transferor, or one or more of its shareholders (including  
337 persons who were shareholders immediately before the transfer), or  
338 any combination thereof, is in control of the corporation to which  
339 the assets are transferred;
- 340 (4) A recapitalization; or
- 341 (5) A mere change in identity, form or place of  
342 organization, however effected.

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

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

353 (j) **Special rules.**

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



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

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

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

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



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

400           (6) For state tax purposes, a corporation or other  
401 legal entity is considered separate from its shareholders,  
402 affiliated corporations or other entities. \* \* \* All transactions  
403 entered into by a corporation must be at "arms-length." If  
404 requested by the commissioner, the taxpayer must be able to  
405 substantiate that the transaction occurred at "arms-length." If  
406 not, the transaction may be adjusted to the satisfaction of the  
407 commissioner. The provisions deleted from this subsection (j)(6)  
408 by Senate Bill No. 2044, 2003 Regular Session, shall be deleted  
409 retroactively to January 1, 1990, and shall not apply to any  
410 transaction (whether occurring before, on, or after January 1,  
411 1990), except those provisions shall not be retroactively deleted  
412 as to, and shall apply to, a transaction to the extent those  
413 provisions have been applied to the transaction in a taxable year  
414 of the taxpayer that is (A) subject to a settlement with or  
415 decision by the commissioner that is final and nonappealable as of  
416 the date of passage of Senate Bill No. 2044, 2003 Regular Session,  
417 or (B) subject to a judgment by a court of this state that is  
418 final and nonappealable as of the date of passage of Senate Bill  
419 No. 2044, 2003 Regular Session. In determining whether the  
420 transaction occurred at arms-length, the commissioner shall  
421 consider the following:



422 (A) Whether the transaction is in compliance with  
423 the federal regulations promulgated under Internal Revenue Code  
424 Section 482;

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

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

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

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

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

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

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

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

448 (l) **Distributions by corporations.**

449 (1) Distributions of the property of a corporation,  
450 including partial and complete liquidations, shall be recognized  
451 by the distributing corporation and the gain or loss shall be  
452 computed on the difference of the fair market value of the assets  
453 distributed and their basis. The total gain or loss from the  
454 distributions to the shareholders shall be recognized by the



455 shareholders subject to subsections (f)(8) and (j)(1); however, a  
456 credit for the tax paid by the distributing corporation on the  
457 gain from the sale or exchange of property under the plan of  
458 distribution will be allowed to the extent of any liability to the  
459 shareholders. The corporation shall provide to the State Tax  
460 Commission a list of all shareholders with their percentage of  
461 ownership, distribution, tax credit allowed and any other  
462 information requested.

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

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

485           (4) **Other distributions.** If any distribution (not in  
486 partial or complete liquidation) made by a corporation to its  
487 shareholders, is not out of increase in value of property accrued



488 before March 16, 1912, and is not out of earnings or profits, then  
489 the amount of such distribution shall be applied against and  
490 reduce the basis of the stock provided in subsection (d), and if  
491 in excess of such basis, such excess shall be taxable in the same  
492 manner as a gain from the sale or exchange of property.

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

495           (6) **Cancellation or redemption of stock.** If a  
496 corporation cancels or redeems its stock (whether or not such  
497 stock was issued as a stock dividend) at such time and in such  
498 manner as to make the distribution and cancellation or redemption  
499 in whole or in part essentially equivalent to the distribution of  
500 a taxable dividend, the amount so distributed in redemption or  
501 cancellation of the stock, to the extent that it represents a  
502 distribution of earnings or profits accumulated after March 16,  
503 1912, shall be treated as a taxable dividend.

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

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





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

522           27-7-9. (a) Except as provided in Sections 27-7-95 through  
523 27-7-103, determination of amount of gain or loss.

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

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

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

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

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

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

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



553 the amount realized bears to the fair market value of the  
554 property.

555 (d) **Basis of property.**

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

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

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

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



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

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

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



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

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

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

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

648           (A) The cost of such property (or in the case of  
649 such property as is described in subsection (d)(2) or (4) of this  
650 section the basis as therein provided, or in the case of property



651 acquired by gift or transfer in trust, the fair market value of  
652 such property at the time of such acquisition); or

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

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

659 (e) **Adjustments to basis.**

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

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



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

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

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

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

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

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

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



717 corporation or in another corporation, a party to a  
718 reorganization.

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

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

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

743           (5) **Distribution with effect of taxable dividend.** If a  
744 distribution made in pursuance of a plan of reorganization is  
745 within the provisions of subsection (f)(4) of this section, but  
746 has the effect of the distribution of a taxable dividend, then  
747 there shall be taxed as a dividend to each distributee such an  
748 amount of the gain recognized under subsection (f)(2) as is not in  
749 excess of his rateable share of the undistributed earnings and



750 profits of the corporation. The remainder, if any, of the gain  
751 recognized under subsection (f)(2) shall be taxed as a gain from  
752 the exchange of property.

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

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

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

780           The provisions of this subsection relating to the  
781 nonrecognition of gain, including the exception provided in  
782 subparagraph (B), shall apply only to an owner of the converted





783 property who has held title to such property for a period at least  
784 three (3) years prior to the date of the disposition of the  
785 converted property, provided that an owner who acquired such  
786 property by bequest, devise, gift or inheritance shall be excluded  
787 from this limitation, if the preceding owner acquired title to  
788 such property at least three (3) years prior to the date of  
789 disposition.

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

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

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

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

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

808 (A) No gain shall be recognized from the sale of  
809 authorized shares in financial institutions domiciled in  
810 Mississippi and domestic corporations, or partnership interests in  
811 domestic limited partnerships and domestic limited liability  
812 companies, that have been held for more than one (1) year;  
813 provided, however, that any gain that would otherwise be excluded  
814 by this provision shall first be applied against, and reduced by,  
815 any losses determined from sales or transactions described by this



816 provision if the losses were incurred in the year of the gain or  
817 within the two (2) years preceding or subsequent to the gain.

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

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

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

828 (iii) The depreciation and/or amortization  
829 that has been taken on the assets of the corporation shall be  
830 recaptured and taxed as ordinary income in the same manner as  
831 provided for in Section 1245 of the Internal Revenue Code, as  
832 amended, and any corresponding regulations relating to Section  
833 1245 property. All depreciation and/or amortization shall be  
834 recaptured up to cost prior to any nonrecognition of gains.

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

837 (1) A statutory merger or consolidation;

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

845 (3) A transfer by a corporation of all or a part of its  
846 assets to another corporation if immediately after the transfer  
847 the transferor, or one or more of its shareholders (including  
848 persons who were shareholders immediately before the transfer), or



849 any combination thereof, is in control of the corporation to which  
850 the assets are transferred;

851 (4) A recapitalization; or

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

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

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

864 (j) **Special rules.**

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

871 (2) **Gain or loss on sales or exchanges in connection**  
872 **with certain liquidations.** Corporations adopting a plan of  
873 complete liquidation under the provisions of the Internal Revenue  
874 Code shall recognize the gain or loss from the sale or exchange of  
875 property by the corporation under said plan. The total gain or  
876 loss from the liquidating distributions shall be recognized by the  
877 shareholders; however, a credit for the tax paid by the  
878 liquidating corporation on the gain from the sale or exchange of  
879 property under the plan of liquidation will be allowed to the  
880 extent of any tax liability to the shareholders. The corporation  
881 shall provide to the State Tax Commission a list of all



882 shareholders with their percentage of ownership, distribution, tax  
883 credit allowed and any other information requested.

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

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

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

911           (6) For state tax purposes, a corporation or other  
912 legal entity is considered separate from its shareholders,  
913 affiliated corporations or other entities. \* \* \* All transactions  
914 entered into by a corporation must be at "arms-length." If



915 requested by the commissioner, the taxpayer must be able to  
916 substantiate that the transaction occurred at "arms-length." If  
917 not, the transaction may be adjusted to the satisfaction of the  
918 commissioner. For purposes of this subsection, compliance with  
919 federal regulations promulgated under Internal Revenue Code  
920 Section 482, shall constitute "arms-length." The provisions  
921 deleted from this subsection (j) (6) by Senate Bill No. 2044, 2003  
922 Regular Session, shall be deleted retroactively to January 1,  
923 1990, and shall not apply to any transaction (whether occurring  
924 before, on, or after January 1, 1990), except those provisions  
925 shall not be retroactively deleted as to, and shall apply to, a  
926 transaction to the extent those provisions have been applied to  
927 the transaction in a taxable year of the taxpayer that is (A)  
928 subject to a settlement with or decision by the commissioner that  
929 is final and nonappealable as of the date of passage of Senate  
930 Bill No. 2044, 2003 Regular Session, or (B) subject to a judgment  
931 by a court of this state that is final and nonappealable as of the  
932 date of passage of Senate Bill No. 2044, 2003 Regular Session.

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

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

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

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

945 (1) **Distributions by corporations.**

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



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

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

969           (3) **Distributions in liquidation.** Amounts distributed  
970 in complete liquidation of a corporation shall be treated as in  
971 full payment in exchange for the stock, and amounts distributed in  
972 partial liquidation of a corporation shall be treated as in part  
973 or full payment in exchange for the stock. The gain or loss to  
974 the distributee resulting from such exchange shall be determined  
975 under subsection (a), but shall be recognized only to the extent  
976 provided in subsection (f). In the case of amounts distributed in  
977 partial liquidation, the part of such distribution which is  
978 property chargeable to capital account shall not be considered a  
979 distribution of earnings or profits within the meaning of



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

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

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

992 (6) **Cancellation or redemption of stock.** If a  
993 corporation cancels or redeems its stock (whether or not such  
994 stock was issued as a stock dividend) at such time and in such  
995 manner as to make the distribution and cancellation or redemption  
996 in whole or in part essentially equivalent to the distribution of  
997 a taxable dividend, the amount so distributed in redemption or  
998 cancellation of the stock, to the extent that it represents a  
999 distribution of earnings or profits accumulated after March 16,  
1000 1912, shall be treated as a taxable dividend.

1001 (7) **"Amounts distributed in partial liquidation"**  
1002 **defined.** As used in this subsection, the term "amounts  
1003 distributed in partial liquidation" means distribution by a  
1004 corporation in complete cancellation or redemption of a part of  
1005 its stock, or one of a series of distributions in complete  
1006 cancellation or redemption of all or a portion of its stock.

1007 (8) **Distributions of stock pursuant to order enforcing**  
1008 **the Antitrust Laws.** Any distribution of stock which is made  
1009 pursuant to the order of any court enforcing the Antitrust Laws of  
1010 the United States, or of any state, shall be a distribution which  
1011 is not out of earnings and profits of the distributing  
1012 corporation, but the value of the stock so distributed shall be



1013 applied against and reduce the basis of the stock of the  
1014 distributing corporation provided in subsection (d), and if in  
1015 excess of such basis, such excess shall be taxable in the same  
1016 manner as a gain from the sale or exchange of property.

1017 **SECTION 2.** Section 27-7-17, Mississippi Code of 1972, is  
1018 amended as follows:

1019 **[Through June 30, 2003, this section shall read as follows:]**

1020 27-7-17. In computing taxable income, there shall be allowed  
1021 as deductions:

1022 (1) **Business deductions.**

1023 (a) **Business expenses.** All the ordinary and necessary  
1024 expenses paid or incurred during the taxable year in carrying on  
1025 any trade or business, including a reasonable allowance for  
1026 salaries or other compensation for personal services actually  
1027 rendered; nonreimbursable traveling expenses incident to current  
1028 employment, including a reasonable amount expended for meals and  
1029 lodging while away from home in the pursuit of a trade or  
1030 business; and rentals or other payments required to be made as a  
1031 condition of the continued use or possession, for purposes of the  
1032 trade or business of property to which the taxpayer has not taken  
1033 or is not taking title or in which he had no equity. Expense  
1034 incurred in connection with earning and distributing nontaxable  
1035 income is not an allowable deduction. Limitations on  
1036 entertainment expenses shall conform to the provisions of the  
1037 Internal Revenue Code of 1986.

1038 (b) **Interest.** All interest paid or accrued during the  
1039 taxable year on business indebtedness, except interest upon the  
1040 indebtedness for the purchase of tax-free bonds, or any stocks,  
1041 the dividends from which are nontaxable under the provisions of  
1042 this article; provided, however, in the case of securities  
1043 dealers, interest payments or accruals on loans, the proceeds of  
1044 which are used to purchase tax-exempt securities, shall be  
1045 deductible if income from otherwise tax-free securities is





1046 reported as income. Investment interest expense shall be limited  
1047 to investment income. \* \* \* For the purposes of this paragraph,  
1048 the phrase "interest upon the indebtedness for the purchase of  
1049 tax-free bonds" applies only to the indebtedness incurred for the  
1050 purpose of directly purchasing tax-free bonds and does not apply  
1051 to any other indebtedness incurred in the regular course of the  
1052 taxpayer's business. Any corporation, association, organization  
1053 or other entity taxable under Section 27-7-23(c) shall allocate  
1054 interest expense as provided in Section 27-7-23(c)(3)(I). The  
1055 provisions deleted from this paragraph (1)(b) by Senate Bill No.  
1056 2044, 2003 Regular Session, shall be deleted retroactively to  
1057 January 1, 1990, and shall not apply to any transaction (whether  
1058 occurring before, on, or after January 1, 1990), except those  
1059 provisions shall not be retroactively deleted as to, and shall  
1060 apply to, a transaction to the extent those provisions have been  
1061 applied to the transaction in a taxable year of the taxpayer that  
1062 is (i) subject to a settlement with or decision by the  
1063 commissioner that is final and nonappealable as of the date of  
1064 passage of Senate Bill No. 2044, 2003 Regular Session, or (ii)  
1065 subject to a judgment by a court of this state that is final and  
1066 nonappealable as of the date of passage of Senate Bill No. 2044,  
1067 2003 Regular Session.

1068 (c) **Taxes.** Taxes paid or accrued within the taxable  
1069 year, except state and federal income taxes, excise taxes based on  
1070 or measured by net income, estate and inheritance taxes, gift  
1071 taxes, cigar and cigarette taxes, gasoline taxes, and sales and  
1072 use taxes unless incurred as an item of expense in a trade or  
1073 business or in the production of taxable income. In the case of  
1074 an individual, taxes permitted as an itemized deduction under the  
1075 provisions of subsection (3)(a) of this section are to be claimed  
1076 thereunder.

1077 (d) **Business losses.**



1078 (i) Losses sustained during the taxable year not  
1079 compensated for by insurance or otherwise, if incurred in trade or  
1080 business, or nonbusiness transactions entered into for profit.

1081 (ii) Limitations on losses from passive activities  
1082 and rental real estate shall conform to the provisions of the  
1083 Internal Revenue Code of 1986.

1084 (e) **Bad debts.** Losses from debts ascertained to be  
1085 worthless and charged off during the taxable year, if sustained in  
1086 the conduct of the regular trade or business of the taxpayer;  
1087 provided, that such losses shall be allowed only when the taxpayer  
1088 has reported as income, on the accrual basis, the amount of such  
1089 debt or account.

1090 (f) **Depreciation.** A reasonable allowance for  
1091 exhaustion, wear and tear of property used in the trade or  
1092 business, or rental property, and depreciation upon buildings  
1093 based upon their reasonable value as of March 16, 1912, if  
1094 acquired prior thereto, and upon cost if acquired subsequent to  
1095 that date.

1096 (g) **Depletion.** In the case of mines, oil and gas  
1097 wells, other natural deposits and timber, a reasonable allowance  
1098 for depletion and for depreciation of improvements, based upon  
1099 cost, including cost of development, not otherwise deducted, or  
1100 fair market value as of March 16, 1912, if acquired prior to that  
1101 date, such allowance to be made upon regulations prescribed by the  
1102 commissioner, with the approval of the Governor.

1103 (h) **Contributions or gifts.** Except as otherwise  
1104 provided in subsection (3)(a) of this section for individuals,  
1105 contributions or gifts made by corporations within the taxable  
1106 year to corporations, organizations, associations or institutions,  
1107 including Community Chest funds, foundations and trusts created  
1108 solely and exclusively for religious, charitable, scientific or  
1109 educational purposes, or for the prevention of cruelty to children  
1110 or animals, no part of the net earnings of which inure to the



1111 benefit of any private stockholder or individual. This deduction  
1112 shall be allowed in an amount not to exceed twenty percent (20%)  
1113 of the net income. Such contributions or gifts shall be allowable  
1114 as deductions only if verified under rules and regulations  
1115 prescribed by the commissioner, with the approval of the Governor.  
1116 Contributions made in any form other than cash shall be allowed as  
1117 a deduction, subject to the limitations herein provided, in an  
1118 amount equal to the actual market value of the contributions at  
1119 the time the contribution is actually made and consummated.

1120           (i) **Reserve funds - insurance companies.** In the case  
1121 of insurance companies the net additions required by law to be  
1122 made within the taxable year to reserve funds when such reserve  
1123 funds are maintained for the purpose of liquidating policies at  
1124 maturity.

1125           (j) **Annuity income.** The sums, other than dividends,  
1126 paid within the taxpayer year on policy or annuity contracts when  
1127 such income has been included in gross income.

1128           (k) **Contributions to employee pension plans.**  
1129 Contributions made by an employer to a plan or a trust forming  
1130 part of a pension plan, stock bonus plan, disability or  
1131 death-benefit plan, or profit-sharing plan of such employer for  
1132 the exclusive benefit of some or all of his, their, or its  
1133 employees, or their beneficiaries, shall be deductible from his,  
1134 their, or its income only to the extent that, and for the taxable  
1135 year in which, the contribution is deductible for federal income  
1136 tax purposes under the Internal Revenue Code of 1986 and any other  
1137 provisions of similar purport in the Internal Revenue Laws of the  
1138 United States, and the rules, regulations, rulings and  
1139 determinations promulgated thereunder, provided that:

1140                   (i) The plan or trust be irrevocable.

1141                   (ii) The plan or trust constitute a part of a  
1142 pension plan, stock bonus plan, disability or death-benefit plan,  
1143 or profit-sharing plan for the exclusive benefit of some or all of



1144 the employer's employees and/or officers, or their beneficiaries,  
1145 for the purpose of distributing the corpus and income of the plan  
1146 or trust to such employees and/or officers, or their  
1147 beneficiaries.

1148 (iii) No part of the corpus or income of the plan  
1149 or trust can be used for purposes other than for the exclusive  
1150 benefit of employees and/or officers, or their beneficiaries.

1151 Contributions to all plans or to all trusts of real or  
1152 personal property (or real and personal property combined) or to  
1153 insured plans created under a retirement plan for which provision  
1154 has been made under the laws of the United States of America,  
1155 making such contributions deductible from income for federal  
1156 income tax purposes, shall be deductible only to the same extent  
1157 under the Income Tax Laws of the State of Mississippi.

1158 (1) **Net operating loss carrybacks and carryovers.** A  
1159 net operating loss for any taxable year ending after December 31,  
1160 1993, and taxable years thereafter, shall be a net operating loss  
1161 carryback to each of the three (3) taxable years preceding the  
1162 taxable year of the loss. If the net operating loss for any  
1163 taxable year is not exhausted by carrybacks to the three (3)  
1164 taxable years preceding the taxable year of the loss, then there  
1165 shall be a net operating loss carryover to each of the fifteen  
1166 (15) taxable years following the taxable year of the loss  
1167 beginning with any taxable year after December 31, 1991.

1168 For any taxable year ending after December 31, 1997, the  
1169 period for net operating loss carrybacks and net operating loss  
1170 carryovers shall be the same as those established by the Internal  
1171 Revenue Code and the rules, regulations, rulings and  
1172 determinations promulgated thereunder as in effect at the taxable  
1173 year end or on December 31, 2000, whichever is earlier.

1174 A net operating loss for any taxable year ending after  
1175 December 31, 2001, and taxable years thereafter, shall be a net  
1176 operating loss carryback to each of the two (2) taxable years



1177 preceding the taxable year of the loss. If the net operating loss  
1178 for any taxable year is not exhausted by carrybacks to the two (2)  
1179 taxable years preceding the taxable year of the loss, then there  
1180 shall be a net operating loss carryover to each of the twenty (20)  
1181 taxable years following the taxable year of the loss beginning  
1182 with any taxable year after the taxable year of the loss.

1183 The term "net operating loss," for the purposes of this  
1184 paragraph, shall be the excess of the deductions allowed over the  
1185 gross income; provided, however, the following deductions shall  
1186 not be allowed in computing same:

1187 (i) No net operating loss deduction shall be  
1188 allowed.

1189 (ii) No personal exemption deduction shall be  
1190 allowed.

1191 (iii) Allowable deductions which are not  
1192 attributable to taxpayer's trade or business shall be allowed only  
1193 to the extent of the amount of gross income not derived from such  
1194 trade or business.

1195 Any taxpayer entitled to a carryback period as provided by  
1196 this paragraph may elect to relinquish the entire carryback period  
1197 with respect to a net operating loss for any taxable year ending  
1198 after December 31, 1991. The election shall be made in the manner  
1199 prescribed by the State Tax Commission and shall be made by the  
1200 due date, including extensions of time, for filing the taxpayer's  
1201 return for the taxable year of the net operating loss for which  
1202 the election is to be in effect. The election, once made for any  
1203 taxable year, shall be irrevocable for that taxable year.

1204 (m) **Amortization of pollution or environmental control**  
1205 **facilities.** Allowance of deduction. Every taxpayer, at his  
1206 election, shall be entitled to a deduction for pollution or  
1207 environmental control facilities to the same extent as that  
1208 allowed under the Internal Revenue Code and the rules,  
1209 regulations, rulings and determinations promulgated thereunder.



1210                   (n)   **Dividend distributions - real estate investment**  
1211 **trusts.** "Real estate investment trust" (hereinafter referred to  
1212 as REIT) shall have the meaning ascribed to such term in Section  
1213 856 of the federal Internal Revenue Code of 1986, as amended. A  
1214 REIT is allowed a dividend distributed deduction if the dividend  
1215 distributions meet the requirements of Section 857 or are  
1216 otherwise deductible under Section 858 or 860, federal Internal  
1217 Revenue Code of 1986, as amended. In addition:

1218                   (i) A dividend distributed deduction shall only be  
1219 allowed for dividends paid by a publicly traded REIT. A qualified  
1220 REIT subsidiary shall be allowed a dividend distributed deduction  
1221 if its owner is a publicly traded REIT.

1222                   (ii) Income generated from real estate contributed  
1223 or sold to a REIT by a shareholder or related party shall not give  
1224 rise to a dividend distributed deduction, unless the shareholder  
1225 or related party would have received the dividend distributed  
1226 deduction under this chapter.

1227                   (iii) A holding corporation receiving a dividend  
1228 from a REIT shall not be allowed the deduction in Section  
1229 27-7-15(4)(t).

1230                   (iv) Any REIT not allowed the dividend distributed  
1231 deduction in the federal Internal Revenue Code of 1986, as  
1232 amended, shall not be allowed a dividend distributed deduction  
1233 under this chapter.

1234           The commissioner is authorized to promulgate rules and  
1235 regulations consistent with the provisions in Section 269 of the  
1236 federal Internal Revenue Code of 1986, as amended, so as to  
1237 prevent the evasion or avoidance of state income tax.

1238                   (o)   **Contributions to college savings trust fund**  
1239 **accounts.** Contributions or payments to a Mississippi Affordable  
1240 College Savings Program account are deductible as provided under  
1241 Section 37-155-113. Payments made under a prepaid tuition  
1242 contract entered into under the Mississippi Prepaid Affordable



1243 College Tuition Program are deductible as provided under Section  
1244 37-155-17.

1245           (2) **Restrictions on the deductibility of certain intangible**  
1246 **expenses and interest expenses with a related member.**

1247           (a) As used in this subsection (2):

1248                   (i) "Intangible expenses and costs" include:

1249                           1. Expenses, losses and costs for, related  
1250 to, or in connection directly or indirectly with the direct or  
1251 indirect acquisition, use, maintenance or management, ownership,  
1252 sale, exchange or any other disposition of intangible property to  
1253 the extent such amounts are allowed as deductions or costs in  
1254 determining taxable income under this chapter;

1255                           2. Expenses or losses related to or incurred  
1256 in connection directly or indirectly with factoring transactions  
1257 or discounting transactions;

1258                           3. Royalty, patent, technical and copyright  
1259 fees;

1260                           4. Licensing fees; and

1261                           5. Other similar expenses and costs.

1262                   (ii) "Intangible property" means patents, patent  
1263 applications, trade names, trademarks, service marks, copyrights  
1264 and similar types of intangible assets.

1265                   (iii) "Interest expenses and cost" means amounts  
1266 directly or indirectly allowed as deductions for purposes of  
1267 determining taxable income under this chapter to the extent such  
1268 interest expenses and costs are directly or indirectly for,  
1269 related to, or in connection with the direct or indirect  
1270 acquisition, maintenance, management, ownership, sale, exchange or  
1271 disposition of intangible property.

1272                   (iv) "Related member" means an entity or person  
1273 that, with respect to the taxpayer during all or any portion of  
1274 the taxable year, is a related entity, a component member as  
1275 defined in the Internal Revenue Code, or is an entity or a person



1276 to or from whom there is attribution of stock ownership in  
1277 accordance with Section 1563(e) of the Internal Revenue Code.

1278 (v) "Related entity" means:

1279 1. A stockholder who is an individual or a  
1280 member of the stockholder's family, as defined in regulations  
1281 prescribed by the commissioner, if the stockholder and the members  
1282 of the stockholder's family own, directly, indirectly,  
1283 beneficially or constructively, in the aggregate, at least fifty  
1284 percent (50%) of the value of the taxpayer's outstanding stock;

1285 2. A stockholder, or a stockholder's  
1286 partnership, limited liability company, estate, trust or  
1287 corporation, if the stockholder and the stockholder's  
1288 partnerships, limited liability companies, estates, trusts and  
1289 corporations own, directly, indirectly, beneficially or  
1290 constructively, in the aggregate, at least fifty percent (50%) of  
1291 the value of the taxpayer's outstanding stock;

1292 3. A corporation, or a party related to the  
1293 corporation in a manner that would require an attribution of stock  
1294 from the corporation to the party or from the party to the  
1295 corporation, if the taxpayer owns, directly, indirectly,  
1296 beneficially or constructively, at least fifty percent (50%) of  
1297 the value of the corporation's outstanding stock under regulation  
1298 prescribed by the commissioner;

1299 4. Any entity or person which would be a  
1300 related member under this section if the taxpayer were considered  
1301 a corporation for purposes of this section.

1302 (b) In computing net income, a taxpayer shall add back  
1303 otherwise deductible interest expenses and costs and intangible  
1304 expenses and costs directly or indirectly paid, accrued to or  
1305 incurred, in connection directly or indirectly with one or more  
1306 direct or indirect transactions with one or more related members.

1307 (c) The adjustments required by this subsection shall  
1308 not apply to such portion of interest expenses and costs and





1309 intangible expenses and costs that the taxpayer can establish  
1310 meets one (1) of the following:

1311 (i) The related member directly or indirectly  
1312 paid, accrued or incurred such portion to a person during the same  
1313 income year who is not a related member; or

1314 (ii) The transaction giving rise to the interest  
1315 expenses and costs or intangible expenses and costs between the  
1316 taxpayer and related member was done primarily for a valid  
1317 business purpose other than the avoidance of taxes, and the  
1318 related member is not primarily engaged in the acquisition, use,  
1319 maintenance or management, ownership, sale, exchange or any other  
1320 disposition of intangible property.

1321 (d) Nothing in this subsection shall require a taxpayer  
1322 to add to its net income more than once any amount of interest  
1323 expenses and costs or intangible expenses and costs that the  
1324 taxpayer pays, accrues or incurs to a related member.

1325 (e) The commissioner may prescribe such regulations as  
1326 necessary or appropriate to carry out the purposes of this  
1327 subsection, including, but not limited to, clarifying definitions  
1328 of terms, rules of stock attribution, factoring and discount  
1329 transactions.

1330 (3) **Individual nonbusiness deductions.**

1331 (a) The amount allowable for individual nonbusiness  
1332 itemized deductions for federal income tax purposes where the  
1333 individual is eligible to elect, for the taxable year, to itemize  
1334 deductions on his federal return except the following:

1335 (i) The deduction for state income taxes paid;

1336 (ii) The deduction for gaming losses from gaming  
1337 establishments;

1338 (iii) The deduction for taxes collected by  
1339 licensed gaming establishments pursuant to Section 27-7-901;

1340 (iv) The deduction for taxes collected by gaming  
1341 establishments pursuant to Section 27-7-903.



1342           (b) In lieu of the individual nonbusiness itemized  
1343 deductions authorized in paragraph (a), for all purposes other  
1344 than ordinary and necessary expenses paid or incurred during the  
1345 taxable year in carrying on any trade or business, an optional  
1346 standard deduction of:

1347                   (i) Three Thousand Four Hundred Dollars  
1348 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred  
1349 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand  
1350 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter  
1351 in the case of married individuals filing a joint or combined  
1352 return;

1353                   (ii) One Thousand Seven Hundred Dollars  
1354 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred  
1355 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand  
1356 Three Hundred Dollars (\$2,300.00) for each calendar year  
1357 thereafter in the case of married individuals filing separate  
1358 returns;

1359                   (iii) Three Thousand Four Hundred Dollars  
1360 (\$3,400.00) in the case of a head of family; or

1361                   (iv) Two Thousand Three Hundred Dollars  
1362 (\$2,300.00) in the case of an individual who is not married.

1363           In the case of a husband and wife living together, having  
1364 separate incomes, and filing combined returns, the standard  
1365 deduction authorized may be divided in any manner they choose. In  
1366 the case of separate returns by a husband and wife, the standard  
1367 deduction shall not be allowed to either if the taxable income of  
1368 one of the spouses is determined without regard to the standard  
1369 deduction.

1370           (c) A nonresident individual shall be allowed the same  
1371 individual nonbusiness deductions as are authorized for resident  
1372 individuals in paragraph (a) or (b) of this subsection; however,  
1373 the nonresident individual is entitled only to that proportion of  
1374 the individual nonbusiness deductions as his net income from



1375 sources within the State of Mississippi bears to his total or  
1376 entire net income from all sources.

1377 (4) Nothing in this section shall permit the same item to be  
1378 deducted more than once, either in fact or in effect.

1379 **[From and after July 1, 2003, this section shall read as**  
1380 **follows:]**

1381 27-7-17. In computing taxable income, there shall be allowed  
1382 as deductions:

1383 (1) **Business deductions.**

1384 (a) **Business expenses.** All the ordinary and necessary  
1385 expenses paid or incurred during the taxable year in carrying on  
1386 any trade or business, including a reasonable allowance for  
1387 salaries or other compensation for personal services actually  
1388 rendered; nonreimbursable traveling expenses incident to current  
1389 employment, including a reasonable amount expended for meals and  
1390 lodging while away from home in the pursuit of a trade or  
1391 business; and rentals or other payments required to be made as a  
1392 condition of the continued use or possession, for purposes of the  
1393 trade or business of property to which the taxpayer has not taken  
1394 or is not taking title or in which he had no equity. Expense  
1395 incurred in connection with earning and distributing nontaxable  
1396 income is not an allowable deduction. Limitations on  
1397 entertainment expenses shall conform to the provisions of the  
1398 Internal Revenue Code of 1986.

1399 (b) **Interest.** All interest paid or accrued during the  
1400 taxable year on business indebtedness, except interest upon the  
1401 indebtedness for the purchase of tax-free bonds, or any stocks,  
1402 the dividends from which are nontaxable under the provisions of  
1403 this article; provided, however, in the case of securities  
1404 dealers, interest payments or accruals on loans, the proceeds of  
1405 which are used to purchase tax-exempt securities, shall be  
1406 deductible if income from otherwise tax-free securities is  
1407 reported as income. Investment interest expense shall be limited



1408 to investment income. \* \* \* For the purposes of this paragraph,  
1409 the phrase "interest upon the indebtedness for the purchase of  
1410 tax-free bonds" applies only to the indebtedness incurred for the  
1411 purpose of directly purchasing tax-free bonds and does not apply  
1412 to any other indebtedness incurred in the regular course of the  
1413 taxpayer's business. Any corporation, association, organization  
1414 or other entity taxable under Section 27-7-23(c) shall allocate  
1415 interest expense as provided in Section 27-7-23(c)(4)(H). The  
1416 provisions deleted from this paragraph (1)(b) by Senate Bill No.  
1417 2044, 2003 Regular Session, shall be deleted retroactively to  
1418 January 1, 1990, and shall not apply to any transaction (whether  
1419 occurring before, on, or after January 1, 1990), except those  
1420 provisions shall not be retroactively deleted as to, and shall  
1421 apply to, a transaction to the extent those provisions have been  
1422 applied to the transaction in a taxable year of the taxpayer that  
1423 is (i) subject to a settlement with or decision by the  
1424 commissioner that is final and nonappealable as of the date of  
1425 passage of Senate Bill No. 2044, 2003 Regular Session, or (ii)  
1426 subject to a judgment by a court of this state that is final and  
1427 nonappealable as of the date of passage of Senate Bill No. 2044,  
1428 2003 Regular Session.

1429 (c) **Taxes.** Taxes paid or accrued within the taxable  
1430 year, except state and federal income taxes, excise taxes based on  
1431 or measured by net income, estate and inheritance taxes, gift  
1432 taxes, cigar and cigarette taxes, gasoline taxes, and sales and  
1433 use taxes unless incurred as an item of expense in a trade or  
1434 business or in the production of taxable income. In the case of  
1435 an individual, taxes permitted as an itemized deduction under the  
1436 provisions of subsection (2)(a) of this section are to be claimed  
1437 thereunder.

1438 (d) **Business losses.**



1439 (i) Losses sustained during the taxable year not  
1440 compensated for by insurance or otherwise, if incurred in trade or  
1441 business, or nonbusiness transactions entered into for profit.

1442 (ii) Limitations on losses from passive activities  
1443 and rental real estate shall conform to the provisions of the  
1444 Internal Revenue Code of 1986.

1445 (e) **Bad debts.** Losses from debts ascertained to be  
1446 worthless and charged off during the taxable year, if sustained in  
1447 the conduct of the regular trade or business of the taxpayer;  
1448 provided, that such losses shall be allowed only when the taxpayer  
1449 has reported as income, on the accrual basis, the amount of such  
1450 debt or account.

1451 (f) **Depreciation.** A reasonable allowance for  
1452 exhaustion, wear and tear of property used in the trade or  
1453 business, or rental property, and depreciation upon buildings  
1454 based upon their reasonable value as of March 16, 1912, if  
1455 acquired prior thereto, and upon cost if acquired subsequent to  
1456 that date.

1457 (g) **Depletion.** In the case of mines, oil and gas  
1458 wells, other natural deposits and timber, a reasonable allowance  
1459 for depletion and for depreciation of improvements, based upon  
1460 cost, including cost of development, not otherwise deducted, or  
1461 fair market value as of March 16, 1912, if acquired prior to that  
1462 date, such allowance to be made upon regulations prescribed by the  
1463 commissioner, with the approval of the Governor.

1464 (h) **Contributions or gifts.** Except as otherwise  
1465 provided in subsection (2)(a) of this section for individuals,  
1466 contributions or gifts made by corporations within the taxable  
1467 year to corporations, organizations, associations or institutions,  
1468 including Community Chest funds, foundations and trusts created  
1469 solely and exclusively for religious, charitable, scientific or  
1470 educational purposes, or for the prevention of cruelty to children  
1471 or animals, no part of the net earnings of which inure to the



1472 benefit of any private stockholder or individual. This deduction  
1473 shall be allowed in an amount not to exceed twenty percent (20%)  
1474 of the net income. Such contributions or gifts shall be allowable  
1475 as deductions only if verified under rules and regulations  
1476 prescribed by the commissioner, with the approval of the Governor.  
1477 Contributions made in any form other than cash shall be allowed as  
1478 a deduction, subject to the limitations herein provided, in an  
1479 amount equal to the actual market value of the contributions at  
1480 the time the contribution is actually made and consummated.

1481 (i) **Reserve funds - insurance companies.** In the case  
1482 of insurance companies the net additions required by law to be  
1483 made within the taxable year to reserve funds when such reserve  
1484 funds are maintained for the purpose of liquidating policies at  
1485 maturity.

1486 (j) **Annuity income.** The sums, other than dividends,  
1487 paid within the taxpayer year on policy or annuity contracts when  
1488 such income has been included in gross income.

1489 (k) **Contributions to employee pension plans.**  
1490 Contributions made by an employer to a plan or a trust forming  
1491 part of a pension plan, stock bonus plan, disability or  
1492 death-benefit plan, or profit-sharing plan of such employer for  
1493 the exclusive benefit of some or all of his, their, or its  
1494 employees, or their beneficiaries, shall be deductible from his,  
1495 their, or its income only to the extent that, and for the taxable  
1496 year in which, the contribution is deductible for federal income  
1497 tax purposes under the Internal Revenue Code of 1986 and any other  
1498 provisions of similar purport in the Internal Revenue Laws of the  
1499 United States, and the rules, regulations, rulings and  
1500 determinations promulgated thereunder, provided that:

1501 (i) The plan or trust be irrevocable.

1502 (ii) The plan or trust constitute a part of a  
1503 pension plan, stock bonus plan, disability or death-benefit plan,  
1504 or profit-sharing plan for the exclusive benefit of some or all of



1505 the employer's employees and/or officers, or their beneficiaries,  
1506 for the purpose of distributing the corpus and income of the plan  
1507 or trust to such employees and/or officers, or their  
1508 beneficiaries.

1509 (iii) No part of the corpus or income of the plan  
1510 or trust can be used for purposes other than for the exclusive  
1511 benefit of employees and/or officers, or their beneficiaries.

1512 Contributions to all plans or to all trusts of real or  
1513 personal property (or real and personal property combined) or to  
1514 insured plans created under a retirement plan for which provision  
1515 has been made under the laws of the United States of America,  
1516 making such contributions deductible from income for federal  
1517 income tax purposes, shall be deductible only to the same extent  
1518 under the Income Tax Laws of the State of Mississippi.

1519 (1) **Net operating loss carrybacks and carryovers.** A  
1520 net operating loss for any taxable year ending after December 31,  
1521 1993, and taxable years thereafter, shall be a net operating loss  
1522 carryback to each of the three (3) taxable years preceding the  
1523 taxable year of the loss. If the net operating loss for any  
1524 taxable year is not exhausted by carrybacks to the three (3)  
1525 taxable years preceding the taxable year of the loss, then there  
1526 shall be a net operating loss carryover to each of the fifteen  
1527 (15) taxable years following the taxable year of the loss  
1528 beginning with any taxable year after December 31, 1991.

1529 For any taxable year ending after December 31, 1997, the  
1530 period for net operating loss carrybacks and net operating loss  
1531 carryovers shall be the same as those established by the Internal  
1532 Revenue Code and the rules, regulations, rulings and  
1533 determinations promulgated thereunder as in effect at the taxable  
1534 year end or on December 31, 2000, whichever is earlier.

1535 A net operating loss for any taxable year ending after  
1536 December 31, 2001, and taxable years thereafter, shall be a net  
1537 operating loss carryback to each of the two (2) taxable years



1538 preceding the taxable year of the loss. If the net operating loss  
1539 for any taxable year is not exhausted by carrybacks to the two (2)  
1540 taxable years preceding the taxable year of the loss, then there  
1541 shall be a net operating loss carryover to each of the twenty (20)  
1542 taxable years following the taxable year of the loss beginning  
1543 with any taxable year after the taxable year of the loss.

1544 The term "net operating loss," for the purposes of this  
1545 paragraph, shall be the excess of the deductions allowed over the  
1546 gross income; provided, however, the following deductions shall  
1547 not be allowed in computing same:

1548 (i) No net operating loss deduction shall be  
1549 allowed.

1550 (ii) No personal exemption deduction shall be  
1551 allowed.

1552 (iii) Allowable deductions which are not  
1553 attributable to taxpayer's trade or business shall be allowed only  
1554 to the extent of the amount of gross income not derived from such  
1555 trade or business.

1556 Any taxpayer entitled to a carryback period as provided by  
1557 this paragraph may elect to relinquish the entire carryback period  
1558 with respect to a net operating loss for any taxable year ending  
1559 after December 31, 1991. The election shall be made in the manner  
1560 prescribed by the State Tax Commission and shall be made by the  
1561 due date, including extensions of time, for filing the taxpayer's  
1562 return for the taxable year of the net operating loss for which  
1563 the election is to be in effect. The election, once made for any  
1564 taxable year, shall be irrevocable for that taxable year.

1565 (m) **Amortization of pollution or environmental control**  
1566 **facilities.** Allowance of deduction. Every taxpayer, at his  
1567 election, shall be entitled to a deduction for pollution or  
1568 environmental control facilities to the same extent as that  
1569 allowed under the Internal Revenue Code and the rules,  
1570 regulations, rulings and determinations promulgated thereunder.





1571                   (n)   **Dividend distributions - real estate investment**  
1572 **trusts.** "Real estate investment trust" (hereinafter referred to  
1573 as REIT) shall have the meaning ascribed to such term in Section  
1574 856 of the federal Internal Revenue Code of 1986, as amended. A  
1575 REIT is allowed a dividend distributed deduction if the dividend  
1576 distributions meet the requirements of Section 857 or are  
1577 otherwise deductible under Section 858 or 860, federal Internal  
1578 Revenue Code of 1986, as amended. In addition:

1579                   (i) A dividend distributed deduction shall only be  
1580 allowed for dividends paid by a publicly traded REIT. A qualified  
1581 REIT subsidiary shall be allowed a dividend distributed deduction  
1582 if its owner is a publicly traded REIT.

1583                   (ii) Income generated from real estate contributed  
1584 or sold to a REIT by a shareholder or related party shall not give  
1585 rise to a dividend distributed deduction, unless the shareholder  
1586 or related party would have received the dividend distributed  
1587 deduction under this chapter.

1588                   (iii) A holding corporation receiving a dividend  
1589 from a REIT shall not be allowed the deduction in Section  
1590 27-7-15(4)(t).

1591                   (iv) Any REIT not allowed the dividend distributed  
1592 deduction in the federal Internal Revenue Code of 1986, as  
1593 amended, shall not be allowed a dividend distributed deduction  
1594 under this chapter.

1595                   The commissioner is authorized to promulgate rules and  
1596 regulations consistent with the provisions in Section 269 of the  
1597 federal Internal Revenue Code of 1986, as amended, so as to  
1598 prevent the evasion or avoidance of state income tax.

1599                   (o)   **Contributions to college savings trust fund**  
1600 **accounts.** Contributions or payments to a Mississippi Affordable  
1601 College Savings Program account are deductible as provided under  
1602 Section 37-155-113. Payments made under a prepaid tuition  
1603 contract entered into under the Mississippi Prepaid Affordable



1604 College Tuition Program are deductible as provided under Section  
1605 37-155-17.

1606 (2) **Individual nonbusiness deductions.**

1607 (a) The amount allowable for individual nonbusiness  
1608 itemized deductions for federal income tax purposes where the  
1609 individual is eligible to elect, for the taxable year, to itemize  
1610 deductions on his federal return except the following:

1611 (i) The deduction for state income taxes paid;

1612 (ii) The deduction for gaming losses from gaming  
1613 establishments;

1614 (iii) The deduction for taxes collected by  
1615 licensed gaming establishments pursuant to Section 27-7-901;

1616 (iv) The deduction for taxes collected by gaming  
1617 establishments pursuant to Section 27-7-903.

1618 (b) In lieu of the individual nonbusiness itemized  
1619 deductions authorized in paragraph (a), for all purposes other  
1620 than ordinary and necessary expenses paid or incurred during the  
1621 taxable year in carrying on any trade or business, an optional  
1622 standard deduction of:

1623 (i) Three Thousand Four Hundred Dollars  
1624 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred  
1625 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand  
1626 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter  
1627 in the case of married individuals filing a joint or combined  
1628 return;

1629 (ii) One Thousand Seven Hundred Dollars  
1630 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred  
1631 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand  
1632 Three Hundred Dollars (\$2,300.00) for each calendar year  
1633 thereafter in the case of married individuals filing separate  
1634 returns;

1635 (iii) Three Thousand Four Hundred Dollars  
1636 (\$3,400.00) in the case of a head of family; or



1637 (iv) Two Thousand Three Hundred Dollars  
1638 (\$2,300.00) in the case of an individual who is not married.

1639 In the case of a husband and wife living together, having  
1640 separate incomes, and filing combined returns, the standard  
1641 deduction authorized may be divided in any manner they choose. In  
1642 the case of separate returns by a husband and wife, the standard  
1643 deduction shall not be allowed to either if the taxable income of  
1644 one of the spouses is determined without regard to the standard  
1645 deduction.

1646 (c) A nonresident individual shall be allowed the same  
1647 individual nonbusiness deductions as are authorized for resident  
1648 individuals in paragraph (a) or (b) of this subsection; however,  
1649 the nonresident individual is entitled only to that proportion of  
1650 the individual nonbusiness deductions as his net income from  
1651 sources within the State of Mississippi bears to his total or  
1652 entire net income from all sources.

1653 (3) Nothing in this section shall permit the same item to be  
1654 deducted more than once, either in fact or in effect.

1655 **SECTION 3.** This act shall take effect and be in force from  
1656 and after its passage.

