

By: Senator(s) Minor

To: Finance

SENATE BILL NO. 2354

1 AN ACT TO AMEND SECTIONS 27-7-9, 27-7-15 AND 27-7-17,  
 2 MISSISSIPPI CODE OF 1972, TO REMOVE THE JULY 1, 2003, REVERTER ON  
 3 THE PROVISIONS IN THE INCOME TAX LAW THAT REVISE THE METHOD OF  
 4 DETERMINING WHETHER A TRANSACTION BY A CORPORATION OR OTHER LEGAL  
 5 ENTITY FOR THE BENEFIT OF ITS SHAREHOLDER OR AN AFFILIATED  
 6 CORPORATION IS AT "ARMS LENGTH" FOR INCOME TAX PURPOSES, WHICH  
 7 PROVIDE THE RULES THAT APPLY FOR THE RECOGNITION OF GAIN OR PROFIT  
 8 FROM THE CASUAL SALE OF PROPERTY BY INSTALLMENT SALE AND PROVIDE  
 9 FOR RESTRICTIONS ON THE DEDUCTIBILITY OF CERTAIN INTANGIBLE  
 10 EXPENSES AND INTEREST EXPENSES WITH A RELATED MEMBER; AND FOR  
 11 RELATED PURPOSES.

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

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

15 \* \* \*

16 27-7-9. (a) Except as provided in Sections 27-7-95 through  
 17 27-7-103, determination of amount of gain or loss.

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

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

28 (3) **Installment sales.** Nothing in this section shall  
 29 be construed to prevent (in the case of property sold under  
 30 contract providing for payment in installments) the taxation of



31 that portion of any installment payment representing gain or  
32 profit in the year in which such payment is received.

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

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

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

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

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

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

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

59 (3) **Property acquired by gift.** In the case of property  
60 acquired by gift after January 1, 1936, the basis shall be the  
61 same as that which it would have in the hands of the donor or the  
62 last preceding owner by whom it was not acquired by gift. If the  
63 facts necessary to determine such basis are unknown to the donee,



64 the commissioner shall, if possible, obtain such facts from such  
65 donor, or last preceding owner, or any other person cognizant  
66 thereof. If the commissioner finds it impossible to obtain such  
67 facts, the commissioner shall establish a basis for the property  
68 from the best information available. In the case of property  
69 acquired by gift on or before January 1, 1936, the basis for  
70 ascertaining gain or loss from the sale or other disposition  
71 thereof shall be the fair market price or value of such property  
72 at the time of acquisition.

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

92           (5) **Property acquired by a transfer in trust.** If the  
93 property was acquired by a transfer in trust (other than by a  
94 transfer in trust by a bequest or devise), the basis shall be the  
95 same as it would be in the hands of the grantor, increased in the



96 amount of gain, or decreased in the amount of loss, recognized to  
97 the grantor upon such transfer under this section.

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

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

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



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

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

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

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

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

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

154                   (1) **In general.** In computing the amount of gain or  
155 loss from the sale or other disposition of property, proper  
156 adjustment shall be made for any expenditure, receipt, loss or  
157 other item, properly chargeable to capital account since the basis  
158 date. The cost or other basis of the property shall also be  
159 diminished by the amount of the deductions for exhaustion, wear  
160 and tear, obsolescence, amortization and depletion, which have  
161 since the acquisition of the property been allowable in respect of



162 such property whether or not such deductions were claimed by the  
163 taxpayer or formerly allowed. In the case of stock, the basis  
164 shall be diminished by the amount of distributions previously made  
165 in respect to such stock, to the extent provided under this  
166 section.

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

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

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

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

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



195 preferred stock in a corporation is exchanged solely for preferred  
196 stock in the same corporation.

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

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

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

222                   (3) **Loss from exchanges not solely in kind.** If an  
223 exchange would be within the provisions of subsection (f)(1) of  
224 this section, if it were not for the fact that the property  
225 received in exchange consists not only of property permitted by  
226 subsection (f)(1) to be received without the recognition of gain



227 or loss but also of other property or money, then no loss from the  
228 exchange shall be recognized.

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

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

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

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

254                   (B) Into money, no gain shall be recognized if  
255 such money is expended, within a period ending two (2) years after  
256 the close of the first taxable year in which any part of the gain  
257 upon the conversion is realized, in the acquisition of other  
258 property similar or related in service or use to the property so  
259 converted, or in the acquisition of control of a corporation





260 owning such other property, or in the establishment of a  
261 replacement fund, but loss shall be recognized. If any part of  
262 the money is not so expended, the gain shall be recognized to the  
263 extent of the money which is not so expended, regardless of  
264 whether such money is received in one or more taxable years and  
265 regardless of whether or not the money which is not so expended  
266 constitutes gain. Provided, gain realized on property which is  
267 compulsorily or involuntarily converted for public use under Title  
268 II, Chapter 27, Mississippi Code of 1972, or any federal law  
269 relating to the involuntary conversion of property for public use  
270 shall not be recognized. Provided further, that gain realized on  
271 property which is voluntarily converted for public use shall not  
272 be recognized after it becomes evident that eminent domain  
273 proceedings are probable.

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

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

290 (8) **Distribution of assets of corporation.** The  
291 distribution to the taxpayer of the assets of a corporation shall



292 be treated as a sale of the stock or securities of the corporation  
293 owned by him, and the gain or loss shall be computed accordingly.

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

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

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

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

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

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

322 (iii) The depreciation and/or amortization  
323 that has been taken on the assets of the corporation shall be  
324 recaptured and taxed as ordinary income in the same manner as



325 provided for in Section 1245 of the Internal Revenue Code, as  
326 amended, and any corresponding regulations relating to Section  
327 1245 property. All depreciation and/or amortization shall be  
328 recaptured up to cost prior to any nonrecognition of gains.

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

331 (1) A statutory merger or consolidation;

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

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

345 (4) A recapitalization; or

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

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

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



358 (j) **Special rules.**

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

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

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

384 (4) Notwithstanding the other provisions of this  
385 section, a corporation or other entity that is involved in  
386 restructuring, reorganizing, distributing assets or profits, or  
387 changing ownership that results in an adjustment to its asset  
388 basis is required to report a gain in the year such transaction  
389 occurs on any such transaction when the transaction involves  
390 assets owned or used in this state, or otherwise represents assets



391 owned or used in this state. If a transfer of income or a change  
392 in asset valuation occurs on the tax records of the taxpayer, such  
393 transaction shall result in taxation to this state to the extent  
394 of the transfer of income or change in asset valuation.

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

405 (6) For state tax purposes, a corporation or other  
406 legal entity is considered separate from its shareholders,  
407 affiliated corporations or other entities. If a corporation or  
408 other legal entity enters into any transaction that is for the  
409 benefit of its shareholders or for the benefit of an affiliated  
410 corporation without an equal mutual business benefit of the  
411 corporation, then, the transaction will be adjusted or eliminated  
412 to arrive at taxable income to this state. All transactions  
413 entered into by a corporation must be at "arms-length." If  
414 requested by the commissioner, the taxpayer must be able to  
415 substantiate that the transaction occurred at "arms-length." If  
416 not, the transaction may be adjusted to the satisfaction of the  
417 commissioner. In determining whether the transaction occurred at  
418 arms-length, the commissioner shall consider the following:

419 (A) Whether the transaction is in compliance with  
420 the federal regulations promulgated under Internal Revenue Code  
421 Section 482;

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



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

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

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

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

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

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

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

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

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



457 Commission a list of all shareholders with their percentage of  
458 ownership, distribution, tax credit allowed and any other  
459 information requested.

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

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

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



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

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

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

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

517       \* \* \*

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

520       \* \* \*

521       27-7-15. (1) For the purposes of this article, except as  
522 otherwise provided, the term "gross income" means and includes the





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

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

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

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

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



556                   (ii) From and after January 1, 2001, federal  
557 rules, regulations and revenue procedures shall be followed with  
558 respect to installment sales except as provided in this  
559 subparagraph (ii). Gain or profit from the casual sale of  
560 property shall be recognized in the year of sale. When a taxpayer  
561 recognizes gain on the casual sale of property in which the gain  
562 is deferred for federal income tax purposes, a taxpayer may elect  
563 to defer the payment of tax resulting from the gain as allowed and  
564 to the extent provided under regulations prescribed by the  
565 commissioner. If the payment of the tax is made on a deferred  
566 basis, the tax shall be computed based on the applicable rate for  
567 the income reported in the year the payment is made. Except as  
568 otherwise provided in subparagraph (iii) of this paragraph (b),  
569 deferring the payment of the tax shall not affect the liability  
570 for the tax. If at any time the installment note is sold,  
571 contributed, transferred or disposed of in any manner and for any  
572 purpose by the original note holder, or the original note holder  
573 is merged, liquidated, dissolved or withdrawn from this state,  
574 then all deferred tax payments under this section shall  
575 immediately become due and payable.

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



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

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

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

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

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

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

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



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

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

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

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

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

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



652           (h) In case of insurance companies, there shall be  
653 excluded from gross income such portion of actual premiums  
654 received from an individual policyholder as is paid back or  
655 credited to or treated as an abatement of premiums of such  
656 policyholder within the taxable year.

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

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

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

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



685 to the spouse or other beneficiary at the death of the primary  
686 retiree.

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

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

702 (o) The proceeds received from federal and state  
703 forestry incentives programs.

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

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



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

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

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

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

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

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

748           (x) Amounts that are subject to the tax levied pursuant  
749 to Section 27-7-901, and are paid to patrons by gaming  
750 establishments licensed under the Mississippi Gaming Control Act.



751 (y) Amounts that are subject to the tax levied pursuant  
752 to Section 27-7-903, and are paid to patrons by gaming  
753 establishments not licensed under the Mississippi Gaming Control  
754 Act.

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

756 (a) **Members of the Armed Forces.** Gross income does not  
757 include compensation received for active service as a member of  
758 the Armed Forces of the United States for any month during any  
759 part of which such member is in a missing status, as defined in  
760 paragraph (d) of this subsection, during the Vietnam Conflict as a  
761 result of such conflict.

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

766 (c) **Period of conflict.** For the purpose of this  
767 subsection, the Vietnam Conflict began February 28, 1961, and ends  
768 on the date designated by the President by Executive Order as the  
769 date of the termination of combatant activities in Vietnam. For  
770 the purpose of this subsection, an individual is in a missing  
771 status as a result of the Vietnam Conflict if immediately before  
772 such status began he was performing service in Vietnam or was  
773 performing service in Southeast Asia in direct support of military  
774 operations in Vietnam. "Southeast Asia," as used in this  
775 paragraph, is defined to include Cambodia, Laos, Thailand and  
776 waters adjacent thereto.

777 (d) "Missing status" means the status of an employee or  
778 member of the Armed Forces who is in active service and is  
779 officially carried or determined to be absent in a status of (i)  
780 missing; (ii) missing in action; (iii) interned in a foreign  
781 country; (iv) captured, beleaguered or besieged by a hostile  
782 force; or (v) detained in a foreign country against his will; but  
783 does not include the status of an employee or member of the Armed





784 Forces for a period during which he is officially determined to be  
785 absent from his post of duty without authority.

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

789 (f) "Employee" means one who is a citizen or national  
790 of the United States or an alien admitted to the United States for  
791 permanent residence and is a resident of the State of Mississippi  
792 and is employed in or under a federal executive agency or  
793 department of the Armed Forces.

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

798 (h) If refund or credit of any overpayment of tax for  
799 any taxable year resulting from the application of subsection (5)  
800 of this section is prevented by the operation of any law or rule  
801 of law, such refund or credit of such overpayment of tax may,  
802 nevertheless, be made or allowed if claim therefor is filed with  
803 the State Tax Commission within three (3) years after the date of  
804 the enactment of this subsection.

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

807 (6) A shareholder of an S corporation, as defined in Section  
808 27-8-3(1)(g), shall take into account the income, loss, deduction  
809 or credit of the S corporation only to the extent provided in  
810 Section 27-8-7(2).

811 \* \* \*

812 **SECTION 3.** Section 27-7-17, Mississippi Code of 1972, is  
813 amended as follows:

814 \* \* \*

815 27-7-17. In computing taxable income, there shall be allowed  
816 as deductions:



817           (1) **Business deductions.**

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

833                   (b) **Interest.** All interest paid or accrued during the  
834 taxable year on business indebtedness, except interest upon the  
835 indebtedness for the purchase of tax-free bonds, or any stocks,  
836 the dividends from which are nontaxable under the provisions of  
837 this article; provided, however, in the case of securities  
838 dealers, interest payments or accruals on loans, the proceeds of  
839 which are used to purchase tax-exempt securities, shall be  
840 deductible if income from otherwise tax-free securities is  
841 reported as income. Investment interest expense shall be limited  
842 to investment income. Interest expense incurred for the purchase  
843 of treasury stock, to pay dividends, or incurred as a result of an  
844 undercapitalized affiliated corporation may not be deducted unless  
845 an ordinary and necessary business purpose can be established to  
846 the satisfaction of the commissioner. For the purposes of this  
847 paragraph, the phrase "interest upon the indebtedness for the  
848 purchase of tax-free bonds" applies only to the indebtedness  
849 incurred for the purpose of directly purchasing tax-free bonds and



850 does not apply to any other indebtedness incurred in the regular  
851 course of the taxpayer's business. Any corporation, association,  
852 organization or other entity taxable under Section 27-7-23(c)  
853 shall allocate interest expense as provided in Section  
854 27-7-23(c)(3)(I).

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

864 (d) **Business losses.**

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

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

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

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



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

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

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

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



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

927                   (i)   The plan or trust be irrevocable.

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

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

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

945                   (1)   **Net operating loss carrybacks and carryovers.**   A  
946   net operating loss for any taxable year ending after December 31,  
947   1993, and taxable years thereafter, shall be a net operating loss



948 carryback to each of the three (3) taxable years preceding the  
949 taxable year of the loss. If the net operating loss for any  
950 taxable year is not exhausted by carrybacks to the three (3)  
951 taxable years preceding the taxable year of the loss, then there  
952 shall be a net operating loss carryover to each of the fifteen  
953 (15) taxable years following the taxable year of the loss  
954 beginning with any taxable year after December 31, 1991.

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

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

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

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

976 (ii) No personal exemption deduction shall be  
977 allowed.

978 (iii) Allowable deductions which are not  
979 attributable to taxpayer's trade or business shall be allowed only



980 to the extent of the amount of gross income not derived from such  
981 trade or business.

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

991 (m) **Amortization of pollution or environmental control**  
992 **facilities.** Allowance of deduction. Every taxpayer, at his  
993 election, shall be entitled to a deduction for pollution or  
994 environmental control facilities to the same extent as that  
995 allowed under the Internal Revenue Code and the rules,  
996 regulations, rulings and determinations promulgated thereunder.

997 (n) **Dividend distributions - real estate investment**  
998 **trusts.** "Real estate investment trust" (hereinafter referred to  
999 as REIT) shall have the meaning ascribed to such term in Section  
1000 856 of the federal Internal Revenue Code of 1986, as amended. A  
1001 REIT is allowed a dividend distributed deduction if the dividend  
1002 distributions meet the requirements of Section 857 or are  
1003 otherwise deductible under Section 858 or 860, federal Internal  
1004 Revenue Code of 1986, as amended. In addition:

1005 (i) A dividend distributed deduction shall only be  
1006 allowed for dividends paid by a publicly traded REIT. A qualified  
1007 REIT subsidiary shall be allowed a dividend distributed deduction  
1008 if its owner is a publicly traded REIT.

1009 (ii) Income generated from real estate contributed  
1010 or sold to a REIT by a shareholder or related party shall not give  
1011 rise to a dividend distributed deduction, unless the shareholder



1012 or related party would have received the dividend distributed  
1013 deduction under this chapter.

1014 (iii) A holding corporation receiving a dividend  
1015 from a REIT shall not be allowed the deduction in Section  
1016 27-7-15(4)(t).

1017 (iv) Any REIT not allowed the dividend distributed  
1018 deduction in the federal Internal Revenue Code of 1986, as  
1019 amended, shall not be allowed a dividend distributed deduction  
1020 under this chapter.

1021 The commissioner is authorized to promulgate rules and  
1022 regulations consistent with the provisions in Section 269 of the  
1023 federal Internal Revenue Code of 1986, as amended, so as to  
1024 prevent the evasion or avoidance of state income tax.

1025 (o) **Contributions to college savings trust fund**  
1026 **accounts.** Contributions or payments to a Mississippi Affordable  
1027 College Savings Program account are deductible as provided under  
1028 Section 37-155-113. Payments made under a prepaid tuition  
1029 contract entered into under the Mississippi Prepaid Affordable  
1030 College Tuition Program are deductible as provided under Section  
1031 37-155-17.

1032 (2) **Restrictions on the deductibility of certain intangible**  
1033 **expenses and interest expenses with a related member.**

1034 (a) As used in this subsection (2):

1035 (i) "Intangible expenses and costs" include:

1036 1. Expenses, losses and costs for, related  
1037 to, or in connection directly or indirectly with the direct or  
1038 indirect acquisition, use, maintenance or management, ownership,  
1039 sale, exchange or any other disposition of intangible property to  
1040 the extent such amounts are allowed as deductions or costs in  
1041 determining taxable income under this chapter;

1042 2. Expenses or losses related to or incurred  
1043 in connection directly or indirectly with factoring transactions  
1044 or discounting transactions;





1045                           3. Royalty, patent, technical and copyright  
1046 fees;

1047                           4. Licensing fees; and

1048                           5. Other similar expenses and costs.

1049                   (ii) "Intangible property" means patents, patent  
1050 applications, trade names, trademarks, service marks, copyrights  
1051 and similar types of intangible assets.

1052                   (iii) "Interest expenses and cost" means amounts  
1053 directly or indirectly allowed as deductions for purposes of  
1054 determining taxable income under this chapter to the extent such  
1055 interest expenses and costs are directly or indirectly for,  
1056 related to, or in connection with the direct or indirect  
1057 acquisition, maintenance, management, ownership, sale, exchange or  
1058 disposition of intangible property.

1059                   (iv) "Related member" means an entity or person  
1060 that, with respect to the taxpayer during all or any portion of  
1061 the taxable year, is a related entity, a component member as  
1062 defined in the Internal Revenue Code, or is an entity or a person  
1063 to or from whom there is attribution of stock ownership in  
1064 accordance with Section 1563(e) of the Internal Revenue Code.

1065                   (v) "Related entity" means:

1066                           1. A stockholder who is an individual or a  
1067 member of the stockholder's family, as defined in regulations  
1068 prescribed by the commissioner, if the stockholder and the members  
1069 of the stockholder's family own, directly, indirectly,  
1070 beneficially or constructively, in the aggregate, at least fifty  
1071 percent (50%) of the value of the taxpayer's outstanding stock;

1072                           2. A stockholder, or a stockholder's  
1073 partnership, limited liability company, estate, trust or  
1074 corporation, if the stockholder and the stockholder's  
1075 partnerships, limited liability companies, estates, trusts and  
1076 corporations own, directly, indirectly, beneficially or



1077 constructively, in the aggregate, at least fifty percent (50%) of  
1078 the value of the taxpayer's outstanding stock;

1079           3. A corporation, or a party related to the  
1080 corporation in a manner that would require an attribution of stock  
1081 from the corporation to the party or from the party to the  
1082 corporation, if the taxpayer owns, directly, indirectly,  
1083 beneficially or constructively, at least fifty percent (50%) of  
1084 the value of the corporation's outstanding stock under regulation  
1085 prescribed by the commissioner;

1086           4. Any entity or person which would be a  
1087 related member under this section if the taxpayer were considered  
1088 a corporation for purposes of this section.

1089           (b) In computing net income, a taxpayer shall add back  
1090 otherwise deductible interest expenses and costs and intangible  
1091 expenses and costs directly or indirectly paid, accrued to or  
1092 incurred, in connection directly or indirectly with one or more  
1093 direct or indirect transactions with one or more related members.

1094           (c) The adjustments required by this subsection shall  
1095 not apply to such portion of interest expenses and costs and  
1096 intangible expenses and costs that the taxpayer can establish  
1097 meets one (1) of the following:

1098           (i) The related member directly or indirectly  
1099 paid, accrued or incurred such portion to a person during the same  
1100 income year who is not a related member; or

1101           (ii) The transaction giving rise to the interest  
1102 expenses and costs or intangible expenses and costs between the  
1103 taxpayer and related member was done primarily for a valid  
1104 business purpose other than the avoidance of taxes, and the  
1105 related member is not primarily engaged in the acquisition, use,  
1106 maintenance or management, ownership, sale, exchange or any other  
1107 disposition of intangible property.

1108           (d) Nothing in this subsection shall require a taxpayer  
1109 to add to its net income more than once any amount of interest



1110 expenses and costs or intangible expenses and costs that the  
1111 taxpayer pays, accrues or incurs to a related member.

1112 (e) The commissioner may prescribe such regulations as  
1113 necessary or appropriate to carry out the purposes of this  
1114 subsection, including, but not limited to, clarifying definitions  
1115 of terms, rules of stock attribution, factoring and discount  
1116 transactions.

1117 (3) **Individual nonbusiness deductions.**

1118 (a) The amount allowable for individual nonbusiness  
1119 itemized deductions for federal income tax purposes where the  
1120 individual is eligible to elect, for the taxable year, to itemize  
1121 deductions on his federal return except the following:

1122 (i) The deduction for state income taxes paid;

1123 (ii) The deduction for gaming losses from gaming  
1124 establishments;

1125 (iii) The deduction for taxes collected by  
1126 licensed gaming establishments pursuant to Section 27-7-901;

1127 (iv) The deduction for taxes collected by gaming  
1128 establishments pursuant to Section 27-7-903.

1129 (b) In lieu of the individual nonbusiness itemized  
1130 deductions authorized in paragraph (a), for all purposes other  
1131 than ordinary and necessary expenses paid or incurred during the  
1132 taxable year in carrying on any trade or business, an optional  
1133 standard deduction of:

1134 (i) Three Thousand Four Hundred Dollars  
1135 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred  
1136 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand  
1137 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter  
1138 in the case of married individuals filing a joint or combined  
1139 return;

1140 (ii) One Thousand Seven Hundred Dollars  
1141 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred  
1142 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand



1143 Three Hundred Dollars (\$2,300.00) for each calendar year  
1144 thereafter in the case of married individuals filing separate  
1145 returns;

1146 (iii) Three Thousand Four Hundred Dollars  
1147 (\$3,400.00) in the case of a head of family; or

1148 (iv) Two Thousand Three Hundred Dollars  
1149 (\$2,300.00) in the case of an individual who is not married.

1150 In the case of a husband and wife living together, having  
1151 separate incomes, and filing combined returns, the standard  
1152 deduction authorized may be divided in any manner they choose. In  
1153 the case of separate returns by a husband and wife, the standard  
1154 deduction shall not be allowed to either if the taxable income of  
1155 one of the spouses is determined without regard to the standard  
1156 deduction.

1157 (c) A nonresident individual shall be allowed the same  
1158 individual nonbusiness deductions as are authorized for resident  
1159 individuals in paragraph (a) or (b) of this subsection; however,  
1160 the nonresident individual is entitled only to that proportion of  
1161 the individual nonbusiness deductions as his net income from  
1162 sources within the State of Mississippi bears to his total or  
1163 entire net income from all sources.

1164 (4) Nothing in this section shall permit the same item to be  
1165 deducted more than once, either in fact or in effect.

1166 \* \* \*

1167 **SECTION 4.** This act shall take effect and be in force from  
1168 and after its passage.

