

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

325 (1) A statutory merger or consolidation;

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

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

339 (4) A recapitalization; or

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

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

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

352 (j) **Special rules.**

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

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

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

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

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

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

399 (6) For state tax purposes, a corporation or other
400 legal entity is considered separate from its shareholders,
401 affiliated corporations or other entities. * * * All transactions
402 entered into by a corporation must be at "arms-length." If
403 requested by the commissioner, the taxpayer must be able to
404 substantiate that the transaction occurred at "arms-length." If
405 not, the transaction may be adjusted to the satisfaction of the
406 commissioner. The provisions deleted from this subsection (j)(6)
407 by Senate Bill No. 2044, 2004 Regular Session, shall be deleted
408 retroactively to January 1, 1990, and shall not apply to any
409 transaction (whether occurring before, on, or after January 1,
410 1990), except those provisions shall not be retroactively deleted
411 as to, and shall apply to, a transaction to the extent those
412 provisions have been applied to the transaction in a taxable year
413 of the taxpayer that is (A) subject to a settlement with or
414 decision by the commissioner that is final and nonappealable as of
415 the date of passage of Senate Bill No. 2044, 2004 Regular Session,
416 or (B) subject to a judgment by a court of this state that is
417 final and nonappealable as of the date of passage of Senate Bill
418 No. 2044, 2004 Regular Session. In determining whether the
419 transaction occurred at arms-length, the commissioner shall
420 consider the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

521 27-7-17. In computing taxable income, there shall be allowed
522 as deductions:

523 (1) **Business deductions.**

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

539 (b) **Interest.** All interest paid or accrued during the
540 taxable year on business indebtedness, except interest upon the
541 indebtedness for the purchase of tax-free bonds, or any stocks,
542 the dividends from which are nontaxable under the provisions of
543 this article; provided, however, in the case of securities
544 dealers, interest payments or accruals on loans, the proceeds of
545 which are used to purchase tax-exempt securities, shall be
546 deductible if income from otherwise tax-free securities is
547 reported as income. Investment interest expense shall be limited
548 to investment income. * * * For the purposes of this paragraph,
549 the phrase "interest upon the indebtedness for the purchase of
550 tax-free bonds" applies only to the indebtedness incurred for the
551 purpose of directly purchasing tax-free bonds and does not apply

552 to any other indebtedness incurred in the regular course of the
553 taxpayer's business. Any corporation, association, organization
554 or other entity taxable under Section 27-7-23(c) shall allocate
555 interest expense as provided in Section 27-7-23(c)(3)(I). The
556 provisions deleted from this paragraph (1)(b) by Senate Bill No.
557 2044, 2004 Regular Session, shall be deleted retroactively to
558 January 1, 1990, and shall not apply to any transaction (whether
559 occurring before, on, or after January 1, 1990), except those
560 provisions shall not be retroactively deleted as to, and shall
561 apply to, a transaction to the extent those provisions have been
562 applied to the transaction in a taxable year of the taxpayer that
563 is (i) subject to a settlement with or decision by the
564 commissioner that is final and nonappealable as of the date of
565 passage of Senate Bill No. 2044, 2004 Regular Session, or (ii)
566 subject to a judgment by a court of this state that is final and
567 nonappealable as of the date of passage of Senate Bill No. 2044,
568 2004 Regular Session.

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

578 (d) **Business losses.**

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

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

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

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

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

604 (h) **Contributions or gifts.** Except as otherwise
605 provided in subsection (3)(a) of this section for individuals,
606 contributions or gifts made by corporations within the taxable
607 year to corporations, organizations, associations or institutions,
608 including Community Chest funds, foundations and trusts created
609 solely and exclusively for religious, charitable, scientific or
610 educational purposes, or for the prevention of cruelty to children
611 or animals, no part of the net earnings of which inure to the
612 benefit of any private stockholder or individual. This deduction
613 shall be allowed in an amount not to exceed twenty percent (20%)
614 of the net income. Such contributions or gifts shall be allowable
615 as deductions only if verified under rules and regulations
616 prescribed by the commissioner, with the approval of the Governor.
617 Contributions made in any form other than cash shall be allowed as

618 a deduction, subject to the limitations herein provided, in an
619 amount equal to the actual market value of the contributions at
620 the time the contribution is actually made and consummated.

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

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

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

641 (i) The plan or trust be irrevocable.

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

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

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

659 (1) **Net operating loss carrybacks and carryovers.** A
660 net operating loss for any taxable year ending after December 31,
661 1993, and taxable years thereafter, shall be a net operating loss
662 carryback to each of the three (3) taxable years preceding the
663 taxable year of the loss. If the net operating loss for any
664 taxable year is not exhausted by carrybacks to the three (3)
665 taxable years preceding the taxable year of the loss, then there
666 shall be a net operating loss carryover to each of the fifteen
667 (15) taxable years following the taxable year of the loss
668 beginning with any taxable year after December 31, 1991.

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

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

682 taxable years following the taxable year of the loss beginning
683 with any taxable year after the taxable year of the loss.

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

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

690 (ii) No personal exemption deduction shall be
691 allowed.

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

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

705 (m) **Amortization of pollution or environmental control**
706 **facilities.** Allowance of deduction. Every taxpayer, at his
707 election, shall be entitled to a deduction for pollution or
708 environmental control facilities to the same extent as that
709 allowed under the Internal Revenue Code and the rules,
710 regulations, rulings and determinations promulgated thereunder.

711 (n) **Dividend distributions - real estate investment**
712 **trusts.** "Real estate investment trust" (hereinafter referred to
713 as REIT) shall have the meaning ascribed to such term in Section
714 856 of the federal Internal Revenue Code of 1986, as amended. A

715 REIT is allowed a dividend distributed deduction if the dividend
716 distributions meet the requirements of Section 857 or are
717 otherwise deductible under Section 858 or 860, federal Internal
718 Revenue Code of 1986, as amended. In addition:

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

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

728 (iii) A holding corporation receiving a dividend
729 from a REIT shall not be allowed the deduction in Section
730 27-7-15(4)(t).

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

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

739 (o) **Contributions to college savings trust fund**
740 **accounts.** Contributions or payments to a Mississippi Affordable
741 College Savings Program account are deductible as provided under
742 Section 37-155-113. Payments made under a prepaid tuition
743 contract entered into under the Mississippi Prepaid Affordable
744 College Tuition Program are deductible as provided under Section
745 37-155-17.

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

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

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

750 1. Expenses, losses and costs for, related

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

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

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

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

755 determining taxable income under this chapter;

756 2. Expenses or losses related to or incurred

757 in connection directly or indirectly with factoring transactions

758 or discounting transactions;

759 3. Royalty, patent, technical and copyright

760 fees;

761 4. Licensing fees; and

762 5. Other similar expenses and costs.

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

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

765 and similar types of intangible assets.

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

767 directly or indirectly allowed as deductions for purposes of

768 determining taxable income under this chapter to the extent such

769 interest expenses and costs are directly or indirectly for,

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

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

772 disposition of intangible property.

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

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

775 the taxable year, is a related entity, a component member as

776 defined in the Internal Revenue Code, or is an entity or a person

777 to or from whom there is attribution of stock ownership in

778 accordance with Section 1563(e) of the Internal Revenue Code.

779 (v) "Related entity" means:

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

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

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

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

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

808 (c) The adjustments required by this subsection shall
809 not apply to such portion of interest expenses and costs and
810 intangible expenses and costs that the taxpayer can establish
811 meets one (1) of the following:

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

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

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

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

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

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

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

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

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

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

843 (b) In lieu of the individual nonbusiness itemized
844 deductions authorized in paragraph (a), for all purposes other

845 than ordinary and necessary expenses paid or incurred during the
846 taxable year in carrying on any trade or business, an optional
847 standard deduction of:

848 (i) Three Thousand Four Hundred Dollars
849 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
850 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
851 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
852 in the case of married individuals filing a joint or combined
853 return;

854 (ii) One Thousand Seven Hundred Dollars
855 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
856 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
857 Three Hundred Dollars (\$2,300.00) for each calendar year
858 thereafter in the case of married individuals filing separate
859 returns;

860 (iii) Three Thousand Four Hundred Dollars
861 (\$3,400.00) in the case of a head of family; or

862 (iv) Two Thousand Three Hundred Dollars
863 (\$2,300.00) in the case of an individual who is not married.

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

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

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

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