

By: Representatives McBride, Akins, Gadd,
Reynolds

To: Ways and Means

HOUSE BILL NO. 1585
(As Passed the House)

1 AN ACT TO AMEND SECTION 27-7-9, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT NO GAIN OR LOSS SHALL BE RECOGNIZED UNDER THE STATE
3 INCOME TAX LAWS ON CERTAIN EXCHANGES OF PROPERTY IF NO GAIN OR
4 LOSS IS RECOGNIZED WITH REGARD TO SUCH EXCHANGES UNDER THE
5 INTERNAL REVENUE CODE AND THAT NO GAIN SHALL BE RECOGNIZED ON
6 PROPERTY THAT IS COMPULSORILY OR INVOLUNTARILY CONVERTED IF NO
7 GAIN IS RECOGNIZED WITH REGARD TO SUCH PROPERTY UNDER THE INTERNAL
8 REVENUE CODE; AND FOR RELATED PURPOSES.

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

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

12 27-7-9. (a) **Except as provided in Sections 27-7-95 through**
13 **27-7-103, determination of amount of gain or loss.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

179 (A) **Property held for productive use or**
180 **investment.** No gain or loss shall be recognized if property held
181 for productive use in trade or business or for investment (not
182 including stock in trade or other property held primarily for
183 sale, nor stocks, bonds, notes, choses in action, certificates of
184 trust or beneficial interest, or other securities or evidence of
185 indebtedness or interest) is exchanged solely for property of a
186 like kind to be held either for productive use in trade or
187 business or for investment. In addition, no gain or loss shall be
188 recognized on any exchange of property if no gain or loss is
189 recognized with regard to such exchange under Section 1031 of the
190 Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

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

273 Except as otherwise provided, the provisions of this
274 subsection relating to the nonrecognition of gain, including the
275 exception provided in subparagraph (B), shall apply only to an
276 owner of the converted property who has held title to such
277 property for a period at least three (3) years prior to the date
278 of the disposition of the converted property, provided that an
279 owner who acquired such property by bequest, devise, gift or
280 inheritance shall be excluded from this limitation, if the
281 preceding owner acquired title to such property at least three (3)
282 years prior to the date of disposition. However, no gain shall be
283 recognized on property that is compulsorily or involuntarily
284 converted if no gain is recognized with regard to such property
285 under Section 1033 of the Internal Revenue Code.

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

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

292 (8) **Distribution of assets of corporation.** The

293 distribution to the taxpayer of the assets of a corporation shall

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

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

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

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

315 (1) A statutory merger or consolidation;

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

323 (3) A transfer by a corporation of all or a part of its
324 assets to another corporation if immediately after the transfer
325 the transferor, or one or more of its shareholders (including
326 persons who were shareholders immediately before the transfer), or

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

329 (4) A recapitalization; or

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

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

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

342 (j) **Special rules.**

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

349 (2) **Gain or loss on sales or exchanges in connection**
350 **with certain liquidations.** Corporations adopting a plan of
351 complete liquidation under the provisions of the Internal Revenue
352 Code shall recognize the gain or loss from the sale or exchange of
353 property by the corporation under said plan. The total gain or
354 loss from the liquidating distributions shall be recognized by the
355 shareholders; however, a credit for the tax paid by the
356 liquidating corporation on the gain from the sale or exchange of
357 property under the plan of liquidation will be allowed to the
358 extent of any tax liability to the shareholders. The corporation
359 shall provide to the State Tax Commission a list of all

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

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

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

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

389 (6) For state tax purposes, a corporation or other
390 legal entity is considered separate from its shareholders,
391 affiliated corporations or other entities. If a corporation or
392 other legal entity enters into any transaction that is for the

393 benefit of its shareholders or for the benefit of an affiliated
394 corporation without an equal mutual business benefit of the
395 corporation, then, the transaction will be adjusted or eliminated
396 to arrive at taxable income to this state. All transactions
397 entered into by a corporation must be at "arms-length." If
398 requested by the commissioner, the taxpayer must be able to
399 substantiate that the transaction occurred at "arms-length." If
400 not, the transaction may be adjusted to the satisfaction of the
401 commissioner. In determining whether the transaction occurred at
402 arms-length, the commissioner shall consider the following:

403 (A) Whether the transaction is in compliance with
404 the federal regulations promulgated under Internal Revenue Code
405 Section 482;

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

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

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

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

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

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

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

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

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

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

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

453 (3) **Distributions in liquidation.** Amounts distributed
454 in complete liquidation of a corporation shall be treated as in
455 full payment in exchange for the stock, and amounts distributed in
456 partial liquidation of a corporation shall be treated as in part
457 or full payment in exchange for the stock. The gain or loss to
458 the distributee resulting from such exchange shall be determined

459 under subsection (a), but shall be recognized only to the extent
460 provided in subsection (f). In the case of amounts distributed in
461 partial liquidation, the part of such distribution which is
462 property chargeable to capital account shall not be considered a
463 distribution of earnings or profits within the meaning of
464 paragraph (2) of this subsection for the purpose of determining
465 the taxability of subsequent distributions by the corporations.

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

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

476 (6) **Cancellation or redemption of stock.** If a
477 corporation cancels or redeems its stock (whether or not such
478 stock was issued as a stock dividend) at such time and in such
479 manner as to make the distribution and cancellation or redemption
480 in whole or in part essentially equivalent to the distribution of
481 a taxable dividend, the amount so distributed in redemption or
482 cancellation of the stock, to the extent that it represents a
483 distribution of earnings or profits accumulated after March 16,
484 1912, shall be treated as a taxable dividend.

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

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

501 **SECTION 2.** This act shall take effect and be in force from
502 and after January 1, 2007.