

By: Senator(s) Minor

To: Finance

SENATE BILL NO. 2609

1 AN ACT TO AMEND SECTION 27-7-9, MISSISSIPPI CODE OF 1972, TO  
 2 REVISE THE MANNER IN WHICH A TRANSACTION BY A CORPORATION OR OTHER  
 3 LEGAL ENTITY IS DETERMINED TO BE "ARMS-LENGTH" FOR INCOME TAX  
 4 PURPOSES WHEN THE CHAIRMAN OF THE STATE TAX COMMISSION DETERMINES  
 5 THAT THERE IS A SHIFTING OF INCOME WHICH RESULTS IN A DECREASE IN  
 6 INCOME OR AN INCREASE IN A LOSS BEING ALLOCATED OR APPORTIONED TO  
 7 THIS STATE; TO AMEND SECTION 27-7-15, MISSISSIPPI CODE OF 1972, TO  
 8 PROVIDE FOR THE RECOGNITION OF GAIN OR PROFIT FROM THE CASUAL SALE  
 9 OF PROPERTY BY INSTALLMENT SALE IN THE YEAR OF THE SALE; TO ALLOW  
 10 DEFERRAL OF THE TAX RESULTING FROM THE GAIN IF THE GAIN IS  
 11 DEFERRED FOR FEDERAL INCOME TAX PURPOSES TO THE EXTENT PROVIDED  
 12 UNDER REGULATIONS PRESCRIBED BY THE CHAIRMAN OF THE STATE TAX  
 13 COMMISSION; TO EXCLUDE FROM THE DEFINITION OF THE TERM "GROSS  
 14 INCOME" CERTAIN INCOME RESULTING FROM TRANSACTION WITH A RELATED  
 15 MEMBER; TO AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, TO  
 16 PROVIDE THAT, IN COMPUTING NET INCOME, A TAXPAYER MUST ADD BACK  
 17 CERTAIN OTHERWISE DEDUCTIBLE EXPENSES AND COSTS PAID TO RELATED  
 18 MEMBERS; TO AMEND SECTION 27-7-23, MISSISSIPPI CODE OF 1972, TO  
 19 REVISE THE DEFINITION OF THE TERM "BUSINESS INCOME"; TO REVISE THE  
 20 MANNER IN WHICH THE INCOME OF MULTI-STATE ENTITIES IS ALLOCATED  
 21 AND APPORTIONED; TO PROVIDE FOR THE ALLOCATION OF CERTAIN  
 22 NONBUSINESS INCOME; TO AMEND SECTION 27-13-13, MISSISSIPPI CODE OF  
 23 1972, TO PROVIDE THAT THE REAL AND TANGIBLE PERSONAL PROPERTY OF  
 24 CERTAIN PASSTHROUGH ENTITIES SHALL BE INCLUDED IN THE VALUE OF THE  
 25 CAPITAL EMPLOYED IN THIS STATE FOR FRANCHISE TAX PURPOSES; AND FOR  
 26 RELATED PURPOSES.

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

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

30 27-7-9. (a) Except as provided in Sections 27-7-95 through  
 31 27-7-103, determination of amount of gain or loss.

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

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

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

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

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

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

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

63           (d) Basis of property.

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

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

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

87           (4) Property acquired by bequests, devises and  
88 inheritance. If personal property was acquired by specific  
89 bequest, or if real property was acquired by general or specific  
90 devise or by intestacy, the basis shall be the fair market value  
91 of the property at the time of the death of the decedent. If the  
92 property was acquired by the decedent's estate from the decedent,  
93 the basis in the hands of the estate shall be the fair market  
94 value of the property at the time of the death of the decedent.  
95 In all other cases, if the property was acquired either by will or  
96 by intestacy, the basis shall be the fair market value of the  
97 property at the time of the distribution to the taxpayer. In the  
98 case of property transferred in trust to pay the income for life  
99 to or upon the order or direction of the grantor, with the right  
100 reserved to the grantor at all times prior to his death to revoke  
101 the trust, the basis of such property in the hands of the persons  
102 entitled under the terms of the trust instrument to the property

103 after the grantor's death shall, after such death, be the same as  
104 if the trust instrument had been a will executed on the day of the  
105 grantor's death.

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

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

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

133 (8) Property acquired in involuntary conversions. If  
134 the property was acquired as the result of a compulsory or  
135 involuntary conversion described in subsection (f), the basis

136 shall be the same as in the case of property so converted,  
137 decreased in the amount of any money received by the taxpayer  
138 which was not expended in accordance with the provisions of said  
139 subsection determining the taxable status of the gain or loss upon  
140 such conversion, and increased in the amount of gain or decreased  
141 in the amount of loss to the taxpayer recognized upon such  
142 conversion.

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

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

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

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

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

167 (e) Adjustments to basis.

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

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

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

196           (1) Exchange solely in kind.

197           (A) Property held for productive use or  
198 investment. No gain or loss shall be recognized if property held  
199 for productive use in trade or business or for investment (not  
200 including stock in trade or other property held primarily for

201 sale, nor stocks, bonds, notes, choses in action, certificates of  
202 trust or beneficial interest, or other securities or evidence of  
203 indebtedness or interest) is exchanged solely for property of a  
204 like kind to be held either for productive use in trade or  
205 business or for investment.

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

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

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

227 (2) Gain from exchanges not solely in kind. If an  
228 exchange would be within the provisions of subsection (f)(1) of  
229 this section, if it were not for the fact that the property  
230 received in exchange consists not only of property permitted by  
231 subsection (f)(1) to be received without the recognition of gain,  
232 but also of other property or money, then the gain, if any, to the  
233 recipient shall be recognized, but in an amount not in excess of

234 the sum of such money and the fair market value of such other  
235 property so received.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

336 (iii) The depreciation and/or amortization  
337 that has been taken on the assets of the corporation shall be  
338 recaptured and taxed as ordinary income in the same manner as  
339 provided for in Section 1245 of the Internal Revenue Code, as  
340 amended, and any corresponding regulations relating to Section  
341 1245 property. All depreciation and/or amortization shall be  
342 recaptured up to cost prior to any nonrecognition of gains.

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

345 (1) A statutory merger or consolidation;

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

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

359 (4) A recapitalization; or

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

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

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

372 (j) Special rules.

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

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

392 (3) Distribution of stock and securities of a  
393 controlled corporation. No gain shall be recognized on a  
394 distribution to a stockholder of a corporation if such gain would

395 not be recognized to such stockholder for federal income tax  
396 purposes under the provisions of Section 355 of the federal  
397 Internal Revenue Code.

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

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

419 (6) For state tax purposes, a corporation or other  
420 legal entity is considered separate from its shareholders,  
421 affiliated corporations or other entities. If a corporation or  
422 other legal entity enters into any transaction that is for the  
423 benefit of its shareholders or for the benefit of an affiliated  
424 corporation without an equal mutual business benefit of the  
425 corporation, then, the transaction will be adjusted or eliminated  
426 to arrive at taxable income to this state. All transactions  
427 entered into by a corporation must be at "arms-length." If

428 requested by the commissioner, the taxpayer must be able to  
429 substantiate that the transaction occurred at "arms-length." If  
430 not, the transaction may be adjusted to the satisfaction of the  
431 commissioner. For purpose of this subsection, compliance with  
432 federal regulations promulgated under Internal Revenue Code  
433 Section 482, shall constitute "arms-length" unless the  
434 commissioner determines that there is a shifting of income between  
435 states, foreign countries or entities which results in a decrease  
436 in income or an increase in a loss being allocated or apportioned  
437 to this state. The commissioner may adjust transactions that  
438 constitute the shifting of income or are not "arms-length,"  
439 however implemented, including transactions between individuals  
440 and entities. The commissioner's determination of what  
441 constitutes an "arms-length" transaction and the shifting of  
442 income shall be prima facie correct.

443 (k) Sale or exchange of residence.

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

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

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

455 (1) Distributions by corporations.

456 (1) Distributions of the property of a corporation,  
457 including partial and complete liquidations, shall be recognized  
458 by the distributing corporation and the gain or loss shall be  
459 computed on the difference of the fair market value of the assets  
460 distributed and their basis. The total gain or loss from the

461 distributions to the shareholders shall be recognized by the  
462 shareholders subject to subsections (f)(8) and (j)(1); however, a  
463 credit for the tax paid by the distributing corporation on the  
464 gain from the sale or exchange of property under the plan of  
465 distribution will be allowed to the extent of any liability to the  
466 shareholders. The corporation shall provide to the State Tax  
467 Commission a list of all shareholders with their percentage of  
468 ownership, distribution, tax credit allowed, and any other  
469 information requested.

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

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

492 (4) Other distributions. If any distribution (not in  
493 partial or complete liquidation) made by a corporation to its

494 shareholders, is not out of increase in value of property accrued  
495 before March 16, 1912, and is not out of earnings or profits, then  
496 the amount of such distribution shall be applied against and  
497 reduce the basis of the stock provided in subsection (d), and if  
498 in excess of such basis, such excess shall be taxable in the same  
499 manner as a gain from the sale or exchange of property.

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

502 (6) Cancellation or redemption of stock. If a  
503 corporation cancels or redeems its stock (whether or not such  
504 stock was issued as a stock dividend) at such time and in such  
505 manner as to make the distribution and cancellation or redemption  
506 in whole or in part essentially equivalent to the distribution of  
507 a taxable dividend, the amount so distributed in redemption or  
508 cancellation of the stock, to the extent that it represents a  
509 distribution of earnings or profits accumulated after March 16,  
510 1912, shall be treated as a taxable dividend.

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

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

527 SECTION 2. Section 27-7-15, Mississippi Code of 1972, is  
528 amended as follows:

529 27-7-15. (1) For the purposes of this article, except as  
530 otherwise provided, the term "gross income" means and includes the  
531 income of a taxpayer derived from salaries, wages, fees or  
532 compensation for service, of whatever kind and in whatever form  
533 paid, including income from governmental agencies and subdivisions  
534 thereof; or from professions, vocations, trades, businesses,  
535 commerce or sales, or renting or dealing in property, or  
536 reacquired property; also from annuities, interest, rents,  
537 dividends, securities, insurance premiums, reinsurance premiums,  
538 considerations for supplemental insurance contracts, or the  
539 transaction of any business carried on for gain or profit, or  
540 gains, or profits, and income derived from any source whatever and  
541 in whatever form paid. The amount of all such items of income  
542 shall be included in the gross income for the taxable year in  
543 which received by the taxpayer. The amount by which an eligible  
544 employee's salary is reduced pursuant to a salary reduction  
545 agreement authorized under Section 25-17-5 shall be excluded from  
546 the term "gross income" within the meaning of this article.

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

550 (a) Dealers in property. Federal rules, regulations  
551 and revenue procedures shall be followed with respect to  
552 installment sales unless it constitutes the effect of shifting  
553 income from inside the state to outside the state.

554 (b) Casual sales of property. \* \* \*

555 (i) Prior to January 1, 2001, federal rules,  
556 regulations and revenue procedures shall be followed with respect  
557 to installment sales except they shall be applied and administered  
558 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the  
559 106th Congress had not been enacted. This provision will

560 generally affect taxpayers, reporting on the accrual method of  
561 accounting, entering into installment note agreements on or after  
562 December 17, 1999. Any gain or profit resulting from the casual  
563 sale of property will be recognized in the year of sale.

564 (ii) From and after January 1, 2001, federal  
565 rules, regulations and revenue procedures shall be followed with  
566 respect to installment sales except as provided in this  
567 subparagraph (ii). Gain or profit from the casual sale of  
568 property shall be recognized in the year of sale. When a taxpayer  
569 recognizes gain on the casual sale of property in which the gain  
570 is deferred for federal income tax purposes, a taxpayer may elect  
571 to defer the payment of tax resulting from the gain as allowed and  
572 to the extent provided under regulations prescribed by the  
573 commissioner. Deferring the payment of the tax shall not affect  
574 the liability for the tax, which is established as of the time of  
575 sale and shall not be changed or altered by any subsequent events  
576 related or unrelated to the casual sale of the property. If at  
577 any time the installment note is sold, contributed, transferred or  
578 disposed of in any manner and for any purpose by the original note  
579 holder, or the original note holder is merged, liquidated,  
580 dissolved or withdrawn from this state, then all deferred tax  
581 payment under this section shall immediately become due and  
582 payable.

583 Interest received on an installment note covered by this  
584 subsection shall have situs as Mississippi taxable income to the  
585 extent the installment note was used to finance tangible and/or  
586 intangible assets located in this state. This ratio may be  
587 different from a ratio that may be used to calculate a Mississippi  
588 gain on the casual sales of property. This interest shall  
589 continue to be subject to Mississippi tax even after any or all  
590 Mississippi tax has been paid on the gain, as in the note being  
591 sold and the full tax liability triggered. If an installment note  
592 is substituted for another type of financial instrument and the

593 installment note is cancelled, then that financial instrument  
594 shall have the same taxable characteristics as the installment  
595 note. The situs of Mississippi interest income covered by this  
596 subparagraph (ii) shall be in effect for all currently outstanding  
597 and future installment notes for years beginning on or after  
598 January 1, 2001.

599 (c) Reserves of insurance companies. In the case of  
600 insurance companies, any amounts in excess of the legally required  
601 reserves shall be included as gross income.

602 (d) Affiliated companies or persons. As regards sales,  
603 exchanges or payments for services from one to another of  
604 affiliated companies or persons or under other circumstances where  
605 the relation between the buyer and seller is such that gross  
606 proceeds from the sale or the value of the exchange or the payment  
607 for services are not indicative of the true value of the subject  
608 matter of the sale, exchange or payment for services, the  
609 commissioner shall prescribe uniform and equitable rules for  
610 determining the true value of the gross income, gross sales,  
611 exchanges or payment for services, or require consolidated returns  
612 of affiliates.

613 (e) Alimony and separate maintenance payments. The  
614 federal rules, regulations and revenue procedures in determining  
615 the deductibility and taxability of alimony payments shall be  
616 followed in this state.

617 (f) Reimbursement for expenses of moving. There shall  
618 be included in gross income (as compensation for services) any  
619 amount received or accrued, directly or indirectly, by an  
620 individual as a payment for or reimbursement of expenses of moving  
621 from one residence to another residence which is attributable to  
622 employment or self-employment.

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

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

628           (a) The proceeds of life insurance policies and  
629 contracts paid upon the death of the insured. However, the income  
630 from the proceeds of such policies or contracts shall be included  
631 in the gross income.

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

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

639           (d) Interest upon the obligations of the United States  
640 or its possessions, or securities issued under the provisions of  
641 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the  
642 War Finance Corporation, or obligations of the State of  
643 Mississippi or political subdivisions thereof.

644           (e) The amounts received through accident or health  
645 insurance as compensation for personal injuries or sickness, plus  
646 the amount of any damages received for such injuries or such  
647 sickness or injuries, or through the War Risk Insurance Act, or  
648 any law for the benefit or relief of injured or disabled members  
649 of the military or naval forces of the United States.

650           (f) Income received by any religious denomination or by  
651 any institution or trust for moral or mental improvements,  
652 religious, Bible, tract, charitable, benevolent, fraternal,  
653 missionary, hospital, infirmary, educational, scientific,  
654 literary, library, patriotic, historical or cemetery purposes or  
655 for two (2) or more of such purposes, if such income be used  
656 exclusively for carrying out one or more of such purposes.

657           (g) Income received by a domestic corporation which is  
658 "taxable in another state" as this term is defined in this  
659 article, derived from business activity conducted outside this  
660 state. Domestic corporations taxable both within and without the  
661 state shall determine Mississippi income on the same basis as  
662 provided for foreign corporations under the provisions of this  
663 article.

664           (h) In case of insurance companies, there shall be  
665 excluded from gross income such portion of actual premiums  
666 received from an individual policyholder as is paid back or  
667 credited to or treated as an abatement of premiums of such  
668 policyholder within the taxable year.

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

673           (j) Amounts paid by the United States to a person as  
674 added compensation for hazardous duty pay as a member of the Armed  
675 Forces of the United States in a combat zone designated by  
676 Executive Order of the President of the United States.

677           (k) Amounts received as retirement allowances,  
678 pensions, annuities or optional retirement allowances paid under  
679 the federal Social Security Act, the Railroad Retirement Act, the  
680 Federal Civil Service Retirement Act, or any other retirement  
681 system of the United States government, retirement allowances paid  
682 under the Mississippi Public Employees' Retirement System,  
683 Mississippi Highway Safety Patrol Retirement System or any other  
684 retirement system of the State of Mississippi or any political  
685 subdivision thereof. The exemption allowed under this paragraph  
686 (k) shall be available to the spouse or other beneficiary at the  
687 death of the primary retiree.

688           (l) Amounts received as retirement allowances,  
689 pensions, annuities or optional retirement allowances paid by any

690 public or governmental retirement system not designated in  
691 subsection (k) or any private retirement system or plan of which  
692 the recipient was a member at any time during the period of his  
693 employment. Amounts received as a distribution under a Roth  
694 individual retirement account shall be treated in the same manner  
695 as provided under the Internal Revenue Code of 1986, as amended.  
696 The exemption allowed under this paragraph (l) shall be available  
697 to the spouse or other beneficiary at the death of the primary  
698 retiree.

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

704 (n) Compensation received for active service as a  
705 member below the grade of commissioned officer and so much of the  
706 compensation as does not exceed the aggregate sum of Five Hundred  
707 Dollars (\$500.00) per month received for active service as a  
708 commissioned officer in the Armed Forces of the United States for  
709 any month during any part of which such members of the Armed  
710 Forces (i) served in a combat zone as designated by Executive  
711 Order of the President of the United States; or (ii) was  
712 hospitalized as a result of wounds, disease or injury incurred  
713 while serving in such combat zone.

714 (o) The proceeds received from federal and state  
715 forestry incentives programs.

716 (p) The amount representing the difference between the  
717 increase of gross income derived from sales for export outside the  
718 United States as compared to the preceding tax year wherein gross  
719 income from export sales was highest, and the net increase in  
720 expenses attributable to such increased exports. In the absence  
721 of direct accounting the ratio of net profits to total sales may  
722 be applied to the increase in export sales. This paragraph (p)

723 shall only apply to businesses located in this state engaging in  
724 the international export of Mississippi goods and services. Such  
725 goods or services shall have at least fifty percent (50%) of value  
726 added at a location in Mississippi.

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

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

737 (s) Amounts paid by the Mississippi Soil and Water  
738 Conservation Commission from the Mississippi Soil and Water  
739 Cost-Share Program for the installation of water quality best  
740 management practices.

741 (t) Dividends received by a holding corporation, as  
742 defined in Section 27-13-1, from a subsidiary corporation, as  
743 defined in Section 27-13-1.

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

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

753 (w) Income resulting from transactions with a related  
754 member and the related member subject to tax under this chapter  
755 was required to, and did in fact, add back the expense of such

756 transactions as required by Section 27-7-17(2). Under no  
757 circumstances may the exclusion from income exceed the deduction  
758 add back of the related member, nor shall the exclusion apply to  
759 any income otherwise excluded under this chapter.

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

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

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

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

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

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

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

794 (f) "Employee" means one who is a citizen or national  
795 of the United States or an alien admitted to the United States for  
796 permanent residence and is a resident of the State of Mississippi  
797 and is employed in or under a federal executive agency or  
798 department of the Armed Forces.

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

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

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

812 (6) A shareholder of an S corporation, as defined in Section  
813 27-8-3(1)(g), shall take into account the income, loss, deduction  
814 or credit of the S corporation only to the extent provided in  
815 Section 27-8-7(2).

816 SECTION 3. Section 27-7-17, Mississippi Code of 1972, is  
817 amended as follows:

818 27-7-17. In computing taxable income, there shall be allowed  
819 as deductions:

820 (1) **Business deductions.**

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

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

854 course of the taxpayer's business. Any corporation, association,  
855 organization or other entity taxable under Section 27-7-23(c)  
856 shall allocate interest expense as provided in Section  
857 27-7-23(c)(4)(H).

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

867 (d) Business losses.

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

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

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

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

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

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

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

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

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

930                   (i) The plan or trust be irrevocable.

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

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

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

948           (1) Net operating loss carrybacks and carryovers. A  
949 net operating loss for any taxable year ending after December 31,  
950 1993, and taxable years thereafter, shall be a net operating loss

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

958 For any taxable year ending after December 31, 1997, the  
959 period for net operating loss carrybacks and net operating loss  
960 carryovers shall be the same as those established by the Internal  
961 Revenue Code and the rules, regulations, rulings and  
962 determinations promulgated thereunder.

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

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

969 (ii) No personal exemption deduction shall be  
970 allowed.

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

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

984 (m) Amortization of pollution or environmental control  
985 facilities. Allowance of deduction. Every taxpayer, at his  
986 election, shall be entitled to a deduction for pollution or  
987 environmental control facilities to the same extent as that  
988 allowed under the Internal Revenue Code and the rules,  
989 regulations, rulings and determinations promulgated thereunder.

990 (n) Dividend distributions - real estate investment  
991 trusts. "Real estate investment trust" (hereinafter referred to  
992 as REIT) shall have the meaning ascribed to such term in Section  
993 856 of the federal Internal Revenue Code of 1986, as amended. A  
994 REIT is allowed a dividend distributed deduction if the dividend  
995 distributions meet the requirements of Section 857 or are  
996 otherwise deductible under Section 858 or 860, federal Internal  
997 Revenue Code of 1986, as amended. In addition:

998 (i) A dividend distributed deduction shall only be  
999 allowed for dividends paid by a publicly traded REIT. A qualified  
1000 REIT subsidiary shall be allowed a dividend distributed deduction  
1001 if its owner is a publicly traded REIT.

1002 (ii) Income generated from real estate contributed  
1003 or sold to a REIT by a shareholder or related party shall not give  
1004 rise to a dividend distributed deduction, unless the shareholder  
1005 or related party would have received the dividend distributed  
1006 deduction under this chapter.

1007 (iii) A holding corporation receiving a dividend  
1008 from a REIT shall not be allowed the deduction in Section  
1009 27-7-15(4)(t).

1010 (iv) Any REIT not allowed the dividend distributed  
1011 deduction in the federal Internal Revenue Code of 1986, as  
1012 amended, shall not be allowed a dividend distributed deduction  
1013 under this chapter.

1014 The commissioner is authorized to promulgate rules and  
1015 regulations consistent with the provisions in Section 269 of the

1016 federal Internal Revenue Code of 1986, as amended, so as to  
1017 prevent the evasion or avoidance of state income tax.

1018 (o) Contributions to college savings trust fund  
1019 accounts. Contributions or payments to a Mississippi Affordable  
1020 College Savings Program account are deductible as provided under  
1021 Section 37-155-113. Payments made under a prepaid tuition  
1022 contract entered into under the Mississippi Prepaid Affordable  
1023 College Tuition Program are deductible as provided under Section  
1024 37-155-17.

1025 (2) **Restrictions on the deductibility of certain intangible**  
1026 **expenses and interest expenses with a related member.**

1027 (a) As used in this subsection (2):

1028 (i) "Intangible expenses and costs" include:

1029 1. Expenses, losses and cost for, related to,  
1030 or in connection directly or indirectly with the direct or  
1031 indirect acquisition, use, maintenance or management, ownership,  
1032 sale, exchange or any other disposition of intangible property to  
1033 the extent such amounts are allowed as deduction or costs in  
1034 determining taxable income under this chapter;

1035 2. Expenses or losses related to or incurred  
1036 in connection directly or indirectly with factoring transactions  
1037 or discounting transactions;

1038 3. Royalty, patent, technical and copyright  
1039 fees;

1040 4. Licensing fees; and

1041 5. Other similar expenses and costs.

1042 (ii) "Intangible property" means patents, patent  
1043 application, trade names, trademarks, service marks, copyrights  
1044 and similar types of intangible assets.

1045 (iii) "Interest expenses and cost" means amounts  
1046 directly or indirectly allowed as deductions for purposes of  
1047 determining taxable income under this chapter to the extent such  
1048 interest expenses and cost are directly or indirectly for, related

1049 to, or in connection with the direct or indirect acquisition  
1050 maintenance, management, ownership, sale, exchange or disposition  
1051 of intangible property.

1052 (iv) "Related member" means an entity or person  
1053 that, with respect to the taxpayer during all or any portion of  
1054 the taxable year, is a related entity, a component member as  
1055 defined in the Internal Revenue Code, or is an entity or a person  
1056 to or from whom there is attribution of stock ownership in  
1057 accordance with Section 1563(e) of the Internal Revenue Code.

1058 (vi) "Related entity" means:

1059 1. A stockholder who is an individual or a  
1060 member of the stockholder's family, as defined in regulations  
1061 prescribed by the commissioner, if the stockholder and the members  
1062 of the stockholder's family own, directly, indirectly,  
1063 beneficially or constructively, in the aggregate, at least fifty  
1064 percent (50%) of the value of the taxpayer's outstanding stock;

1065 2. A stockholder, or a stockholder's  
1066 partnership, limited liability company, estate, trust or  
1067 corporation, if the stockholder and the stockholder's  
1068 partnerships, limited liability companies, estates, trusts and  
1069 corporations own, directly, indirectly, beneficially or  
1070 constructively, in the aggregate, at least fifty percent (50%) of  
1071 the value of the taxpayer's outstanding stock;

1072 3. A corporation, or a party related to the  
1073 corporation in a manner that would require an attribution of stock  
1074 from the corporation to the party or from the party to the  
1075 corporation, if the taxpayer owns, directly, indirectly,  
1076 beneficially or constructively, at least fifty percent (50%) of  
1077 the value of the corporation's outstanding stock under regulation  
1078 prescribed by the commissioner;

1079 4. Any entity or person which would be a  
1080 related member under this section if the taxpayer were considered  
1081 a corporation for purposes of this section.

1082           (b) In computing net income, a taxpayer shall add back  
1083 otherwise deductible interest expenses and costs and intangible  
1084 expenses and costs directly or indirectly paid, accrued or  
1085 incurred to, in connection directly or indirectly with one or more  
1086 direct or indirect transaction with one or more related members.

1087           (c) The adjustments required by this subsection shall  
1088 not apply to such portion of interest expenses and costs and  
1089 intangible expenses and costs that the taxpayer can establish by  
1090 the preponderance of the evidence meets both of the following:

1091                   (i) The related member directly or indirectly  
1092 paid, accrued or incurred such portion to a person during the same  
1093 income year who is not a related member; and

1094                   (ii) The transaction giving rise to the interest  
1095 expenses and costs or the intangible expenses and costs between  
1096 the taxpayer and the related member did not have the effect of  
1097 avoiding any portion of the tax due under this chapter.

1098           (d) Nothing in this subsection shall require a taxpayer  
1099 to add to its net income more than once any amount of interest  
1100 expenses and costs or intangible expenses and costs that the  
1101 taxpayer pays, accrues or incurs to a related member.

1102           (e) The commissioner may prescribe such regulations as  
1103 necessary or appropriate to carry out the purposes of this  
1104 subsection, including, but not limited to, clarifying definitions  
1105 of terms, rules of stock attribution, factoring and discount  
1106 transactions.

1107           (3) Individual nonbusiness deductions.

1108                   (a) The amount allowable for individual nonbusiness  
1109 itemized deductions for federal income tax purposes, except the  
1110 deduction for state income taxes paid, where the individual is  
1111 eligible to elect, for the taxable year, to itemize deductions on  
1112 his federal return; or

1113                   (b) In lieu of the individual nonbusiness itemized  
1114 deductions authorized in paragraph (a), for all purposes other

1115 than ordinary and necessary expenses paid or incurred during the  
1116 taxable year in carrying on any trade or business, an optional  
1117 standard deduction of:

1118                   (i) Three Thousand Four Hundred Dollars  
1119 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred  
1120 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand  
1121 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter  
1122 in the case of married individuals filing a joint or combined  
1123 return;

1124                   (ii) One Thousand Seven Hundred Dollars  
1125 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred  
1126 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand  
1127 Three Hundred Dollars (\$2,300.00) for each calendar year  
1128 thereafter in the case of married individuals filing separate  
1129 returns;

1130                   (iii) Three Thousand Four Hundred Dollars  
1131 (\$3,400.00) in the case of a head of family; or

1132                   (iv) Two Thousand Three Hundred Dollars  
1133 (\$2,300.00) in the case of an individual who is not married.

1134           In the case of a husband and wife living together, having  
1135 separate incomes, and filing combined returns, the standard  
1136 deduction authorized may be divided in any manner they choose. In  
1137 the case of separate returns by a husband and wife, the standard  
1138 deduction shall not be allowed to either if the taxable income of  
1139 one of the spouses is determined without regard to the standard  
1140 deduction.

1141           (c) A nonresident individual shall be allowed the same  
1142 individual nonbusiness deductions as are authorized for resident  
1143 individuals in paragraph (a) or (b) of this subsection; however,  
1144 the nonresident individual is entitled only to that proportion of  
1145 the individual nonbusiness deductions as his net income from  
1146 sources within the State of Mississippi bears to his total or  
1147 entire net income from all sources.

1148 (3) Nothing in this section shall permit the same item to be  
1149 deducted more than once, either in fact or in effect.

1150 SECTION 4. Section 27-7-23, Mississippi Code of 1972, is  
1151 amended as follows:

1152 27-7-23. (a) **Definitions.**

1153 (1) "Doing business" means the operation of any  
1154 business enterprise or activity in Mississippi for financial  
1155 profit or economic gain, including, but not limited to, the  
1156 following:

1157 (A) The regular maintenance of an office or other  
1158 place of business in Mississippi; or

1159 (B) The regular maintenance in Mississippi of an  
1160 inventory of merchandise or material for sale, distribution or  
1161 manufacture, regardless of whether kept on the premises of the  
1162 taxpayer or otherwise; or

1163 (C) The selling or distributing of merchandise to  
1164 customers in Mississippi directly from a company-owned or operated  
1165 vehicle when title to the merchandise is transferred from the  
1166 seller or distributor to the customer at the time of the sale or  
1167 distribution (transient selling); or

1168 (D) The regular rendering of service to clients or  
1169 customers in Mississippi in person or by agents or employees; or

1170 (E) The owning, renting or operating of business  
1171 or income-producing property, real or personal, in Mississippi; or

1172 (F) The performing of contracts, prime or sublet  
1173 work, for the construction, repair or renovation of real or  
1174 personal property.

1175 (2) "Business income" means income of any type or  
1176 class, and from any activity that meets the relationship described  
1177 in the transactional test or the relationship test described in  
1178 this paragraph (2). The classification of income by occasionally  
1179 used labels, including, but not limited to, manufacturing income,  
1180 compensation for services, sales income interest, dividends,

1181 rents, royalties, gains, operating income, and nonoperating income  
1182 shall not be considered when determining whether income is  
1183 business or nonbusiness income. All income of the taxpayer is  
1184 business income unless clearly classifiable as nonbusiness income.  
1185 A taxpayer seeking to overcome a classification of income as  
1186 business income must establish by clear and convincing evidence  
1187 that the income has been incorrectly classified.

1188 (A) Transactional test. Business income includes  
1189 income arising from transactions and activity in the regular  
1190 course of the taxpayer's trade or business.

1191 (i) If the transaction or activity is in the  
1192 regular course of the taxpayer's trade or business, part of which  
1193 trade or business is conducted within Mississippi, the resulting  
1194 income of the transaction or activity is business income for  
1195 Mississippi. Income may be business income even though the actual  
1196 transaction or activity that gives rise to the income does not  
1197 occur in Mississippi.

1198 (ii) For a transaction or activity to be in  
1199 the regular course of the taxpayer's trade or business, the  
1200 transactions or activity need not be one that frequently occurs in  
1201 the trade or business, although most frequently occurring  
1202 transaction or activities shall be considered to be in the regular  
1203 course of a trade or business. It is sufficient to classify a  
1204 transaction or activity as being in the regular course of a trade  
1205 or business if it is reasonable to conclude transactions of that  
1206 type are customary in the kind of trade or business being  
1207 conducted or are within the scope of what the trade or business  
1208 does.

1209 (B) Functional test. Business income includes  
1210 income from tangible and intangible property if the acquisition,  
1211 management and/or disposition of the property constitute integral  
1212 parts of the taxpayer's regular trade or business operation.

1213                   (i) Under the functional test, business  
1214 income need not be derived from transactions or activities that  
1215 are in the regular course of the taxpayer's own particular trade  
1216 or business. It shall be sufficient if the property from which  
1217 the income is derived is or was an integral, functional, necessary  
1218 or operative component of the taxpayer's trade or business  
1219 operations, part of which trade or business is or was conducted  
1220 within this state.

1221                   (ii) Income that is derived from isolated  
1222 sales, leases, assignments, licenses and other infrequently  
1223 occurring dispositions, transfers or transactions involving  
1224 property, including transactions made in liquidation or the  
1225 winding up of business is business income if the property is or  
1226 was used in the taxpayer's trade or business operation. Income  
1227 from the licensing of intangible assets, such as patents,  
1228 copyrights, trademarks, service marks, goodwill, know-how, trade  
1229 secrets and similar assets, that were developed or acquired for  
1230 use by the taxpayer in his trade or business operations,  
1231 constitute business income whether the licensing itself  
1232 constituted the operation of a trade or business and whether the  
1233 taxpayer remains in the same trade or business from or for which  
1234 the intangible asset was developed or acquired.

1235                   (iii) Under the functional test, income from  
1236 intangible property is business income when the intangible  
1237 property serves an operating function, as opposed to solely an  
1238 investment function. The relevant inquiry shall focus on whether  
1239 the property is or was held in furtherance of the taxpayer's trade  
1240 or business, that is, on the objective characteristics of the  
1241 intangible property's use or acquisition and its relation to the  
1242 taxpayer and the taxpayer's activities. The functional test is  
1243 not satisfied where the holding of the property is limited solely  
1244 to an investment function as is the case where the holding of the

1245 property is limited to mere financial betterment of the taxpayer  
1246 in general.

1247 (iv) If the property is or was held in  
1248 furtherance of the taxpayer's trade or business beyond mere  
1249 financial betterment, then income from the property may be  
1250 business income even though the actual transaction or activity  
1251 involving the property that gives rise to the income does not  
1252 occur in Mississippi.

1253 (v) If, with respect to an item of property,  
1254 a taxpayer takes a deduction from business income that is  
1255 apportioned to Mississippi, or includes that item of property in  
1256 the property factor, it is presumed that the item of property is  
1257 or was integral to the taxpayer's trade or business operations.  
1258 No presumption arises from the absence of any of this action.

1259 (vi) Application of the functional test is  
1260 generally unaffected by the form of the property. Income arising  
1261 from intangible property is business income when the intangible  
1262 property itself or the underlying value of the intangible property  
1263 is or was an integral, functional, necessary or operative  
1264 component to the taxpayer's trade or business operation.  
1265 Therefore, while treatment of income derived from transactions  
1266 involving intangible property as business income may be supported  
1267 by a finding that the issuer of the intangible property and the  
1268 taxpayer are engaged in the same trade or business, establishment  
1269 of such a relationship is not the exclusive basis for concluding  
1270 that the income constitutes business income. It is sufficient to  
1271 support a finding of business income if the holding of the  
1272 intangible property served an operational rather than an  
1273 investment function.

1274 (3) "Nonbusiness income" means all income that does not  
1275 meet the definition of business income.

1276           (4) "Commercial domicile" means the principal place  
1277 from which the trade or business of the taxpayer is directed or  
1278 managed.

1279           (5) "State" means any state of the United States, the  
1280 District of Columbia, the Commonwealth of Puerto Rico, any  
1281 territory or possession of the United States, and any foreign  
1282 country or political subdivision thereof.

1283           (b) **Nonresident individuals, partnerships, trusts and**  
1284 **estates.**

1285           (1) The tax imposed by this article shall apply to the  
1286 entire net income of a taxable nonresident derived from  
1287 employment, trade, business, professional, personal service or  
1288 other activity for financial gain or profit, performed or carried  
1289 on within Mississippi, including the rental of real or personal  
1290 property located within this state or for use herein and including  
1291 the sale or exchange or other disposition of tangible or  
1292 intangible property having a situs in Mississippi.

1293           (2) Income derived from trade, business or other  
1294 commercial activity shall be taxed to the extent that it is  
1295 derived from such activity within this state. Mississippi net  
1296 income shall be determined by direct or separate accounting of  
1297 such income if the commissioner is satisfied that such separate  
1298 accounting reflects correctly the income attributable to this  
1299 state, but otherwise it shall be determined in the same manner as  
1300 prescribed by the commissioner for the allocation and  
1301 apportionment of income of foreign corporations having income from  
1302 sources both within and without the state.

1303           (3) A taxable nonresident shall be allowed to deduct  
1304 expenses, interest, taxes, losses, bad debts, depreciation and  
1305 similar business expenses only to the extent that they are  
1306 allowable under this article and are attributable to the  
1307 production of income allocable to and taxable by the State of  
1308 Mississippi. As to allowable deductions essentially personal in

1309 nature, such as contributions to charitable organizations, medical  
1310 expenses, taxes, interest and the optional standard deduction,  
1311 such taxable nonresident shall be allowed deductions therefor in  
1312 the ratio that the net income from sources within Mississippi  
1313 bears to the total net income from all sources of such taxable  
1314 nonresident, computed as if such taxable nonresident were a  
1315 resident of Mississippi.

1316 (c) **Foreign corporations, associations, organizations and**  
1317 **other entities.**

1318 (1) Corporations and organizations required to file.  
1319 All foreign corporations and other organizations which have  
1320 obtained a certificate of authority from the Secretary of State to  
1321 do business in Mississippi, or corporations or organizations which  
1322 are in fact doing business in Mississippi, are subject to the  
1323 income tax levy and are required to file annual income tax returns  
1324 unless the corporation or organization is specifically exempt from  
1325 tax by this article.

1326 (2) Allocation and apportionment of income. Except as  
1327 provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and  
1328 27-7-24.7, Mississippi Code of 1972, any corporation or  
1329 organization having business income from business activity which  
1330 is taxable both within and without this state shall allocate and  
1331 apportion its net business income as prescribed by the  
1332 commissioner. If the business income of the corporation is  
1333 derived solely from property owned or business done in this state  
1334 and the corporation is not taxable in another state, the entire  
1335 business income shall be allocated to this state. \* \* \* A  
1336 corporation is taxable in another state if, \* \* \* in that state  
1337 the corporation is subject to a net income tax, or a franchise tax  
1338 measured by net income, or \* \* \* if that state has jurisdiction to  
1339 subject the corporation to a net income tax regardless of  
1340 whether \* \* \* the state does or does not subject the corporation  
1341 to a net income tax.

1342 \* \* \*

1343 (3) Except as provided in Sections 27-7-24, 27-7-24.1,  
1344 27-7-24.3, 27-7-24.5 and 27-7-24.7, Mississippi Code of 1972, for  
1345 the purpose of any formula which includes a sales factor, sales  
1346 shall be assigned to Mississippi based on the following  
1347 conditions:

1348 (A) Sales of tangible personal property, including  
1349 interest, carrying charges, deferred charges and delivery charges  
1350 incident to such sales, are in this state if:

1351 (i) The property is delivered or shipped to a  
1352 purchaser, or to the designee of the purchaser, other than the  
1353 United States Government, within this state regardless of the  
1354 f.o.b. point or other conditions of the sale; or

1355 (ii) The property is shipped from an office,  
1356 store, warehouse, factory, or other place of storage in this  
1357 state, and (a) the purchaser is the United States Government, or  
1358 (b) the taxpayer is not taxable in the state of the purchaser.

1359 (B) Other sales or rentals are assignable to  
1360 Mississippi if:

1361 (i) The receipts are from real or tangible  
1362 personal property located in Mississippi; or

1363 (ii) The receipts are from intangible  
1364 property and are received from sources within Mississippi; or

1365 (iii) The receipts are from services and the  
1366 income-producing activities are in Mississippi.

1367 (4) Nonbusiness income. Rents and royalties from real  
1368 or tangible personal property, capital gains, interest, dividends,  
1369 or patent or copyright royalties, to the extent that they  
1370 constitute nonbusiness income, shall be allocated as follows:

1371 (A) Net rents and royalties from real property are  
1372 allocable to the state in which the property is located.

1373 (B) Net rents and royalties from tangible personal  
1374 property are allocable to the state in which the property is used,

1375 or to this state in their entirety if the corporation's commercial  
1376 domicile is in this state and the corporation is not organized  
1377 under the laws of or taxable in the state in which the property is  
1378 utilized.

1379 (C) Capital gains and losses from sales of real  
1380 property are allocable to the state in which the property is  
1381 located.

1382 (D) Capital gains and losses from sales of  
1383 tangible personal property are allocable to the state in which the  
1384 property is located, or to this state if the corporation's  
1385 commercial domicile is in this state and the corporation is not  
1386 taxable in the state in which the property had a situs.

1387 (E) Capital gains and losses from sales of  
1388 intangible personal property are allocable to the state of the  
1389 corporation's commercial domicile.

1390 (F) Interest and dividends are allocable to the  
1391 state of the corporation's commercial domicile.

1392 (G) Patent and copyright royalties are allocable  
1393 to the state in which the patent or copyright is utilized by the  
1394 payer, or to this state if and to the extent that the patent or  
1395 copyright is utilized by the payer in a state in which the  
1396 corporation is not taxable and the corporation's commercial  
1397 domicile is in this state.

1398 (H) Any other nonbusiness income shall be  
1399 allocated as prescribed by the commissioner.

1400 (I) All expenses connected with earning  
1401 nonbusiness income, such as interest, taxes, general and  
1402 administrative expenses and such other expenses relating to the  
1403 production of nonbusiness income, shall be deducted from gross  
1404 nonbusiness income. Nonbusiness interest expense shall be  
1405 computed by using the ratio of nonbusiness assets to total assets  
1406 applied to total interest expense.

1407 (d) **Foreign lenders.**

1408           (1) In the case of any foreign lender, (corporation,  
1409 association, organization, individual, partnership, trusts or  
1410 estates), other than: (A) a foreign insurance company subject to  
1411 certification by the Commissioner of Insurance, as provided by  
1412 Section 83-21-1 et seq.; or (B) a foreign lender qualified under  
1413 the general laws of this state to do business herein; or (C) a  
1414 foreign lender which maintains an office or place of business  
1415 within this state; or (D) lenders that sold properties in this  
1416 state and financed such sale and reported on the installment  
1417 method, interest income received or accrued on or after January 1,  
1418 1977, from loans secured by real estate or from lending on the  
1419 security of real estate located within this state shall be  
1420 excluded from Mississippi gross income and exempt from the  
1421 Mississippi income tax levy and the reporting requirements.

1422           (2) In the case of any foreign lender exempted in  
1423 paragraph (1) of this subsection, interest income received on any  
1424 loan finalized or consummated after January 1, 1977, shall be  
1425 excluded from Mississippi gross income and the net profits derived  
1426 therefrom shall be exempt from the Mississippi income tax levy for  
1427 the life of such loan.

1428           (e) **Insurance companies.** Insurance companies, other than  
1429 life insurance companies, deriving premium income from within and  
1430 without the state, may determine their Mississippi net income from  
1431 underwriting by apportioning to this state a part of their total  
1432 net underwriting income by such processes or formulas of general  
1433 apportionment as are prescribed by the commissioner; provided that  
1434 a company adopting this method of reporting for any year must  
1435 adhere to said method of reporting for subsequent years, unless  
1436 permission is granted by the commissioner to change to a different  
1437 method of reporting; and provided that all affiliated companies of  
1438 the same group shall use the same method of reporting.

1439           (f) **Bond requirements.** Any individual or corporation  
1440 subject to the tax imposed by this article, engaged in the

1441 business of performing contracts which may require the payment of  
1442 net income taxes, may be required by the commissioner, before  
1443 entering into the performance of any contract or contracts the  
1444 consideration of which is more than Ten Thousand Dollars  
1445 (\$10,000.00), to execute and file a good and valid bond with a  
1446 surety company authorized to do business in this state, or with  
1447 sufficient sureties to be approved by the commissioner,  
1448 conditioned that all taxes which may accrue to the State of  
1449 Mississippi will be paid when due. Provided, however, that such  
1450 bond shall not exceed five percent (5%) of the total contracts  
1451 entered into during the taxable period, and, provided further,  
1452 that any taxpayer, in lieu of furnishing such bond, may pay the  
1453 maximum sum required herein as advance payment of taxes due on the  
1454 net income realized from any contract or contracts performed or  
1455 completed in this state.

1456 SECTION 5. Section 27-13-13, Mississippi Code of 1972, is  
1457 amended as follows:

1458 27-13-13. (1) In the case of organizations doing business  
1459 both within and without Mississippi, the value of the capital  
1460 employed in this state shall be determined by first computing the  
1461 ratio between (1) the real and tangible personal property owned in  
1462 Mississippi and gross receipts from business carried on in  
1463 Mississippi, and (2) the total real and tangible personal property  
1464 owned and gross receipts wherever located and from wherever  
1465 received. Said ratio then shall be applied to the total capital  
1466 stock, surplus, undivided profits and true reserves and the result  
1467 of that application shall be the capital employed in this state.  
1468 Where an organization owns an interest in a passthrough entity,  
1469 such as a partnership, limited liability company or a limited  
1470 liability partnership, the real and tangible personal property  
1471 owned by such passthrough entity shall be included in the  
1472 computation of the ratio provided for in this subsection as though  
1473 such property is owned or was received by the organization.

1474 Provided, however, that the amount of the determined capital in  
1475 Mississippi shall in no case be less than the assessed value of  
1476 the Mississippi property of the organization for the year  
1477 preceding the year in which the return is due. The assessed value  
1478 of the property owned by a passthrough entity shall be included as  
1479 being owned by the organization.

1480 (2) (a) For the purpose of this section, for tax returns  
1481 for tax years ending before January 1, 1999, an organization which  
1482 uses a formula method of apportionment in making income tax  
1483 returns to this state shall determine its gross receipts from  
1484 business carried on in Mississippi by applying to total unitary  
1485 receipts the ratio achieved, or which would be achieved, by such  
1486 formula and adding to the result of such application any  
1487 nonunitary Mississippi receipts.

1488 (b) For the purpose of this section, for tax returns  
1489 for tax years ending on or after January 1, 1999, the gross  
1490 receipts of an organization that is required to use a formula  
1491 method of apportionment in making income tax returns to this state  
1492 shall be the same (both as to gross receipts from business carried  
1493 on in Mississippi and gross receipts wherever located) as the  
1494 gross receipts (or sales) used for the receipts or sales factor in  
1495 the applicable income tax formula. However, gross receipts from  
1496 business carried on in Mississippi, for the purposes of this  
1497 section, shall also include any receipts from the taxpayer's  
1498 business operations which are not apportioned but rather are  
1499 directly allocated or assigned to this state. If the taxpayer is  
1500 required to use a formula method of apportionment in making income  
1501 tax returns which does not have a receipts or sales factor, then  
1502 the receipts factor for the franchise tax formula shall be  
1503 determined by regulation of the commission. Receipt of a  
1504 passthrough entity added to the organization's receipts in  
1505 subsection (1) of this section shall be in lieu of including any

1506 allocated income of that passthrough entity as provided for in  
1507 this subsection.

1508 SECTION 6. This act shall apply to taxable years beginning  
1509 on or after January 1, 2001.

1510 SECTION 7. This act shall take effect and be in force from  
1511 and after January 1, 2001.