

By: Senator(s) Nunnelee

To: Finance

SENATE BILL NO. 2108

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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



326 (1) A statutory merger or consolidation;

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

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

340 (4) A recapitalization; or

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

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

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

353 (j) **Special rules.**

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



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

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

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

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



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

400 (6) For state tax purposes, a corporation or other
401 legal entity is considered separate from its shareholders,
402 affiliated corporations or other entities. * * * All transactions
403 entered into by a corporation must be at "arms-length." If
404 requested by the commissioner, the taxpayer must be able to
405 substantiate that the transaction occurred at "arms-length." If
406 not, the transaction may be adjusted to the satisfaction of the
407 commissioner. The provisions deleted from this subsection (j)(6)
408 by Senate Bill No. 2108, 2002 Regular Session, shall be deleted
409 retroactively to January 1, 1990, and shall not apply to any
410 transaction (whether occurring before, on, or after January 1,
411 1990), except those provisions shall not be retroactively deleted
412 as to, and shall apply to, a transaction to the extent those
413 provisions have been applied to the transaction in a taxable year
414 of the taxpayer that is (A) subject to a settlement with or
415 decision by the commissioner that is final and nonappealable as of
416 the date of passage of Senate Bill No. 2108, 2002 Regular Session,
417 or (B) subject to a judgment by a court of this state that is
418 final and nonappealable as of the date of passage of Senate Bill
419 No. 2108, 2002 Regular Session. In determining whether the
420 transaction occurred at arms-length, the commissioner shall
421 consider the following:



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

837 (1) A statutory merger or consolidation;

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

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



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

851 (4) A recapitalization; or

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

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

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

864 (j) **Special rules.**

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

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



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

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

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

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

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



915 requested by the commissioner, the taxpayer must be able to
916 substantiate that the transaction occurred at "arms-length." If
917 not, the transaction may be adjusted to the satisfaction of the
918 commissioner. For purposes of this subsection, compliance with
919 federal regulations promulgated under Internal Revenue Code
920 Section 482, shall constitute "arms-length." The provisions
921 deleted from this subsection (j) (6) by Senate Bill No. 2108, 2002
922 Regular Session, shall be deleted retroactively to January 1,
923 1990, and shall not apply to any transaction (whether occurring
924 before, on, or after January 1, 1990), except those provisions
925 shall not be retroactively deleted as to, and shall apply to, a
926 transaction to the extent those provisions have been applied to
927 the transaction in a taxable year of the taxpayer that is (A)
928 subject to a settlement with or decision by the commissioner that
929 is final and nonappealable as of the date of passage of Senate
930 Bill No. 2108, 2002 Regular Session, or (B) subject to a judgment
931 by a court of this state that is final and nonappealable as of the
932 date of passage of Senate Bill No. 2108, 2002 Regular Session.

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

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

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

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

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

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



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

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

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



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

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

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

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

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

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



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

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

1019 **[From and after January 1, 2002, through June 30, 2003, this**
1020 **section shall read as follows:]**

1021 27-7-17. In computing taxable income, there shall be allowed
1022 as deductions:

1023 (1) **Business deductions.**

1024 (a) **Business expenses.** All the ordinary and necessary
1025 expenses paid or incurred during the taxable year in carrying on
1026 any trade or business, including a reasonable allowance for
1027 salaries or other compensation for personal services actually
1028 rendered; nonreimbursable traveling expenses incident to current
1029 employment, including a reasonable amount expended for meals and
1030 lodging while away from home in the pursuit of a trade or
1031 business; and rentals or other payments required to be made as a
1032 condition of the continued use or possession, for purposes of the
1033 trade or business of property to which the taxpayer has not taken
1034 or is not taking title or in which he had no equity. Expense
1035 incurred in connection with earning and distributing nontaxable
1036 income is not an allowable deduction. Limitations on
1037 entertainment expenses shall conform to the provisions of the
1038 Internal Revenue Code of 1986.

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



1046 deductible if income from otherwise tax-free securities is
1047 reported as income. Investment interest expense shall be limited
1048 to investment income. * * * For the purposes of this paragraph,
1049 the phrase "interest upon the indebtedness for the purchase of
1050 tax-free bonds" applies only to the indebtedness incurred for the
1051 purpose of directly purchasing tax-free bonds and does not apply
1052 to any other indebtedness incurred in the regular course of the
1053 taxpayer's business. Any corporation, association, organization
1054 or other entity taxable under Section 27-7-23(c) shall allocate
1055 interest expense as provided in Section 27-7-23(c)(3)(I). The
1056 provisions deleted from this paragraph (1)(b) by Senate Bill No.
1057 2108, 2002 Regular Session, shall be deleted retroactively to
1058 January 1, 1990, and shall not apply to any transaction (whether
1059 occurring before, on, or after January 1, 1990), except those
1060 provisions shall not be retroactively deleted as to, and shall
1061 apply to, a transaction to the extent those provisions have been
1062 applied to the transaction in a taxable year of the taxpayer that
1063 is (i) subject to a settlement with or decision by the
1064 commissioner that is final and nonappealable as of the date of
1065 passage of Senate Bill No. 2108, 2002 Regular Session, or (ii)
1066 subject to a judgment by a court of this state that is final and
1067 nonappealable as of the date of passage of Senate Bill No. 2108,
1068 2002 Regular Session.

1069 (c) **Taxes.** Taxes paid or accrued within the taxable
1070 year, except state and federal income taxes, excise taxes based on
1071 or measured by net income, estate and inheritance taxes, gift
1072 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
1073 use taxes unless incurred as an item of expense in a trade or
1074 business or in the production of taxable income. In the case of
1075 an individual, taxes permitted as an itemized deduction under the
1076 provisions of subsection (3)(a) of this section are to be claimed
1077 thereunder.

1078 (d) **Business losses.**



1079 (i) Losses sustained during the taxable year not
1080 compensated for by insurance or otherwise, if incurred in trade or
1081 business, or nonbusiness transactions entered into for profit.

1082 (ii) Limitations on losses from passive activities
1083 and rental real estate shall conform to the provisions of the
1084 Internal Revenue Code of 1986.

1085 (e) **Bad debts.** Losses from debts ascertained to be
1086 worthless and charged off during the taxable year, if sustained in
1087 the conduct of the regular trade or business of the taxpayer;
1088 provided, that such losses shall be allowed only when the taxpayer
1089 has reported as income, on the accrual basis, the amount of such
1090 debt or account.

1091 (f) **Depreciation.** A reasonable allowance for
1092 exhaustion, wear and tear of property used in the trade or
1093 business, or rental property, and depreciation upon buildings
1094 based upon their reasonable value as of March 16, 1912, if
1095 acquired prior thereto, and upon cost if acquired subsequent to
1096 that date.

1097 (g) **Depletion.** In the case of mines, oil and gas
1098 wells, other natural deposits and timber, a reasonable allowance
1099 for depletion and for depreciation of improvements, based upon
1100 cost, including cost of development, not otherwise deducted, or
1101 fair market value as of March 16, 1912, if acquired prior to that
1102 date, such allowance to be made upon regulations prescribed by the
1103 commissioner, with the approval of the Governor.

1104 (h) **Contributions or gifts.** Except as otherwise
1105 provided in subsection (3)(a) of this section for individuals,
1106 contributions or gifts made by corporations within the taxable
1107 year to corporations, organizations, associations or institutions,
1108 including Community Chest funds, foundations and trusts created
1109 solely and exclusively for religious, charitable, scientific or
1110 educational purposes, or for the prevention of cruelty to children
1111 or animals, no part of the net earnings of which inure to the



1112 benefit of any private stockholder or individual. This deduction
1113 shall be allowed in an amount not to exceed twenty percent (20%)
1114 of the net income. Such contributions or gifts shall be allowable
1115 as deductions only if verified under rules and regulations
1116 prescribed by the commissioner, with the approval of the Governor.
1117 Contributions made in any form other than cash shall be allowed as
1118 a deduction, subject to the limitations herein provided, in an
1119 amount equal to the actual market value of the contributions at
1120 the time the contribution is actually made and consummated.

1121 (i) **Reserve funds - insurance companies.** In the case
1122 of insurance companies the net additions required by law to be
1123 made within the taxable year to reserve funds when such reserve
1124 funds are maintained for the purpose of liquidating policies at
1125 maturity.

1126 (j) **Annuity income.** The sums, other than dividends,
1127 paid within the taxpayer year on policy or annuity contracts when
1128 such income has been included in gross income.

1129 (k) **Contributions to employee pension plans.**
1130 Contributions made by an employer to a plan or a trust forming
1131 part of a pension plan, stock bonus plan, disability or
1132 death-benefit plan, or profit-sharing plan of such employer for
1133 the exclusive benefit of some or all of his, their, or its
1134 employees, or their beneficiaries, shall be deductible from his,
1135 their, or its income only to the extent that, and for the taxable
1136 year in which, the contribution is deductible for federal income
1137 tax purposes under the Internal Revenue Code of 1986 and any other
1138 provisions of similar purport in the Internal Revenue Laws of the
1139 United States, and the rules, regulations, rulings and
1140 determinations promulgated thereunder, provided that:

1141 (i) The plan or trust be irrevocable.

1142 (ii) The plan or trust constitute a part of a
1143 pension plan, stock bonus plan, disability or death-benefit plan,
1144 or profit-sharing plan for the exclusive benefit of some or all of



1145 the employer's employees and/or officers, or their beneficiaries,
1146 for the purpose of distributing the corpus and income of the plan
1147 or trust to such employees and/or officers, or their
1148 beneficiaries.

1149 (iii) No part of the corpus or income of the plan
1150 or trust can be used for purposes other than for the exclusive
1151 benefit of employees and/or officers, or their beneficiaries.

1152 Contributions to all plans or to all trusts of real or
1153 personal property (or real and personal property combined) or to
1154 insured plans created under a retirement plan for which provision
1155 has been made under the laws of the United States of America,
1156 making such contributions deductible from income for federal
1157 income tax purposes, shall be deductible only to the same extent
1158 under the Income Tax Laws of the State of Mississippi.

1159 (1) Net operating loss carrybacks and carryovers. A
1160 net operating loss for any taxable year ending after December 31,
1161 1993, and taxable years thereafter, shall be a net operating loss
1162 carryback to each of the three (3) taxable years preceding the
1163 taxable year of the loss. If the net operating loss for any
1164 taxable year is not exhausted by carrybacks to the three (3)
1165 taxable years preceding the taxable year of the loss, then there
1166 shall be a net operating loss carryover to each of the fifteen
1167 (15) taxable years following the taxable year of the loss
1168 beginning with any taxable year after December 31, 1991.

1169 For any taxable year ending after December 31, 1997, the
1170 period for net operating loss carrybacks and net operating loss
1171 carryovers shall be the same as those established by the Internal
1172 Revenue Code and the rules, regulations, rulings and
1173 determinations promulgated thereunder.

1174 The term "net operating loss," for the purposes of this
1175 paragraph, shall be the excess of the deductions allowed over the
1176 gross income; provided, however, the following deductions shall
1177 not be allowed in computing same:



1178 (i) No net operating loss deduction shall be
1179 allowed.

1180 (ii) No personal exemption deduction shall be
1181 allowed.

1182 (iii) Allowable deductions which are not
1183 attributable to taxpayer's trade or business shall be allowed only
1184 to the extent of the amount of gross income not derived from such
1185 trade or business.

1186 Any taxpayer entitled to a carryback period as provided by
1187 this paragraph may elect to relinquish the entire carryback period
1188 with respect to a net operating loss for any taxable year ending
1189 after December 31, 1991. The election shall be made in the manner
1190 prescribed by the State Tax Commission and shall be made by the
1191 due date, including extensions of time, for filing the taxpayer's
1192 return for the taxable year of the net operating loss for which
1193 the election is to be in effect. The election, once made for any
1194 taxable year, shall be irrevocable for that taxable year.

1195 (m) **Amortization of pollution or environmental control**
1196 **facilities.** Allowance of deduction. Every taxpayer, at his
1197 election, shall be entitled to a deduction for pollution or
1198 environmental control facilities to the same extent as that
1199 allowed under the Internal Revenue Code and the rules,
1200 regulations, rulings and determinations promulgated thereunder.

1201 (n) **Dividend distributions - real estate investment**
1202 **trusts.** "Real estate investment trust" (hereinafter referred to
1203 as REIT) shall have the meaning ascribed to such term in Section
1204 856 of the federal Internal Revenue Code of 1986, as amended. A
1205 REIT is allowed a dividend distributed deduction if the dividend
1206 distributions meet the requirements of Section 857 or are
1207 otherwise deductible under Section 858 or 860, federal Internal
1208 Revenue Code of 1986, as amended. In addition:

1209 (i) A dividend distributed deduction shall only be
1210 allowed for dividends paid by a publicly traded REIT. A qualified



1211 REIT subsidiary shall be allowed a dividend distributed deduction
1212 if its owner is a publicly traded REIT.

1213 (ii) Income generated from real estate contributed
1214 or sold to a REIT by a shareholder or related party shall not give
1215 rise to a dividend distributed deduction, unless the shareholder
1216 or related party would have received the dividend distributed
1217 deduction under this chapter.

1218 (iii) A holding corporation receiving a dividend
1219 from a REIT shall not be allowed the deduction in Section
1220 27-7-15(4)(t).

1221 (iv) Any REIT not allowed the dividend distributed
1222 deduction in the federal Internal Revenue Code of 1986, as
1223 amended, shall not be allowed a dividend distributed deduction
1224 under this chapter.

1225 The commissioner is authorized to promulgate rules and
1226 regulations consistent with the provisions in Section 269 of the
1227 federal Internal Revenue Code of 1986, as amended, so as to
1228 prevent the evasion or avoidance of state income tax.

1229 (o) **Contributions to college savings trust fund**
1230 **accounts.** Contributions or payments to a Mississippi Affordable
1231 College Savings Program account are deductible as provided under
1232 Section 37-155-113. Payments made under a prepaid tuition
1233 contract entered into under the Mississippi Prepaid Affordable
1234 College Tuition Program are deductible as provided under Section
1235 37-155-17.

1236 (2) **Restrictions on the deductibility of certain intangible**
1237 **expenses and interest expenses with a related member.**

1238 (a) As used in this subsection (2):

1239 (i) "Intangible expenses and costs" include:

1240 1. Expenses, losses and costs for, related
1241 to, or in connection directly or indirectly with the direct or
1242 indirect acquisition, use, maintenance or management, ownership,
1243 sale, exchange or any other disposition of intangible property to



1244 the extent such amounts are allowed as deductions or costs in
1245 determining taxable income under this chapter;

1246 2. Expenses or losses related to or incurred
1247 in connection directly or indirectly with factoring transactions
1248 or discounting transactions;

1249 3. Royalty, patent, technical and copyright
1250 fees;

1251 4. Licensing fees; and

1252 5. Other similar expenses and costs.

1253 (ii) "Intangible property" means patents, patent
1254 applications, trade names, trademarks, service marks, copyrights
1255 and similar types of intangible assets.

1256 (iii) "Interest expenses and cost" means amounts
1257 directly or indirectly allowed as deductions for purposes of
1258 determining taxable income under this chapter to the extent such
1259 interest expenses and costs are directly or indirectly for,
1260 related to, or in connection with the direct or indirect
1261 acquisition maintenance, management, ownership, sale, exchange or
1262 disposition of intangible property.

1263 (iv) "Related member" means an entity or person
1264 that, with respect to the taxpayer during all or any portion of
1265 the taxable year, is a related entity, a component member as
1266 defined in the Internal Revenue Code, or is an entity or a person
1267 to or from whom there is attribution of stock ownership in
1268 accordance with Section 1563(e) of the Internal Revenue Code.

1269 (v) "Related entity" means:

1270 1. A stockholder who is an individual or a
1271 member of the stockholder's family, as defined in regulations
1272 prescribed by the commissioner, if the stockholder and the members
1273 of the stockholder's family own, directly, indirectly,
1274 beneficially or constructively, in the aggregate, at least fifty
1275 percent (50%) of the value of the taxpayer's outstanding stock;



1276 2. A stockholder, or a stockholder's
1277 partnership, limited liability company, estate, trust or
1278 corporation, if the stockholder and the stockholder's
1279 partnerships, limited liability companies, estates, trusts and
1280 corporations own, directly, indirectly, beneficially or
1281 constructively, in the aggregate, at least fifty percent (50%) of
1282 the value of the taxpayer's outstanding stock;

1283 3. A corporation, or a party related to the
1284 corporation in a manner that would require an attribution of stock
1285 from the corporation to the party or from the party to the
1286 corporation, if the taxpayer owns, directly, indirectly,
1287 beneficially or constructively, at least fifty percent (50%) of
1288 the value of the corporation's outstanding stock under regulation
1289 prescribed by the commissioner;

1290 4. Any entity or person which would be a
1291 related member under this section if the taxpayer were considered
1292 a corporation for purposes of this section.

1293 (b) In computing net income, a taxpayer shall add back
1294 otherwise deductible interest expenses and costs and intangible
1295 expenses and costs directly or indirectly paid, accrued to or
1296 incurred, in connection directly or indirectly with one or more
1297 direct or indirect transactions with one or more related members.

1298 (c) The adjustments required by this subsection shall
1299 not apply to such portion of interest expenses and costs and
1300 intangible expenses and costs that the taxpayer can establish
1301 meets one (1) of the following:

1302 (i) The related member directly or indirectly
1303 paid, accrued or incurred such portion to a person during the same
1304 income year who is not a related member; or

1305 (ii) The transaction giving rise to the interest
1306 expenses and costs or intangible expenses and costs between the
1307 taxpayer and related member was done primarily for a valid
1308 business purpose other than the avoidance of taxes, and the



1309 related member is not primarily engaged in the acquisition, use,
1310 maintenance or management, ownership, sale, exchange or any other
1311 disposition of intangible property.

1312 (d) Nothing in this subsection shall require a taxpayer
1313 to add to its net income more than once any amount of interest
1314 expenses and costs or intangible expenses and costs that the
1315 taxpayer pays, accrues or incurs to a related member.

1316 (e) The commissioner may prescribe such regulations as
1317 necessary or appropriate to carry out the purposes of this
1318 subsection, including, but not limited to, clarifying definitions
1319 of terms, rules of stock attribution, factoring and discount
1320 transactions.

1321 (3) **Individual nonbusiness deductions.**

1322 (a) The amount allowable for individual nonbusiness
1323 itemized deductions for federal income tax purposes where the
1324 individual is eligible to elect, for the taxable year, to itemize
1325 deductions on his federal return except the following:

- 1326 (i) The deduction for state income taxes paid;
1327 (ii) The deduction for gaming losses from gaming
1328 establishments licensed under the Mississippi Gaming Control Act;
1329 (iii) The deduction for taxes collected by
1330 licensed gaming establishments pursuant to Section 27-7-901.

1331 (b) In lieu of the individual nonbusiness itemized
1332 deductions authorized in paragraph (a), for all purposes other
1333 than ordinary and necessary expenses paid or incurred during the
1334 taxable year in carrying on any trade or business, an optional
1335 standard deduction of:

- 1336 (i) Three Thousand Four Hundred Dollars
1337 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
1338 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
1339 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
1340 in the case of married individuals filing a joint or combined
1341 return;



1342 (ii) One Thousand Seven Hundred Dollars
1343 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
1344 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
1345 Three Hundred Dollars (\$2,300.00) for each calendar year
1346 thereafter in the case of married individuals filing separate
1347 returns;

1348 (iii) Three Thousand Four Hundred Dollars
1349 (\$3,400.00) in the case of a head of family; or

1350 (iv) Two Thousand Three Hundred Dollars
1351 (\$2,300.00) in the case of an individual who is not married.

1352 In the case of a husband and wife living together, having
1353 separate incomes, and filing combined returns, the standard
1354 deduction authorized may be divided in any manner they choose. In
1355 the case of separate returns by a husband and wife, the standard
1356 deduction shall not be allowed to either if the taxable income of
1357 one of the spouses is determined without regard to the standard
1358 deduction.

1359 (c) A nonresident individual shall be allowed the same
1360 individual nonbusiness deductions as are authorized for resident
1361 individuals in paragraph (a) or (b) of this subsection; however,
1362 the nonresident individual is entitled only to that proportion of
1363 the individual nonbusiness deductions as his net income from
1364 sources within the State of Mississippi bears to his total or
1365 entire net income from all sources.

1366 (3) Nothing in this section shall permit the same item to be
1367 deducted more than once, either in fact or in effect.

1368 **[From and after July 1, 2003, this section shall read as**
1369 **follows:]**

1370 27-7-17. In computing taxable income, there shall be allowed
1371 as deductions:

1372 (1) **Business deductions.**

1373 (a) **Business expenses.** All the ordinary and necessary
1374 expenses paid or incurred during the taxable year in carrying on



1375 any trade or business, including a reasonable allowance for
1376 salaries or other compensation for personal services actually
1377 rendered; nonreimbursable traveling expenses incident to current
1378 employment, including a reasonable amount expended for meals and
1379 lodging while away from home in the pursuit of a trade or
1380 business; and rentals or other payments required to be made as a
1381 condition of the continued use or possession, for purposes of the
1382 trade or business of property to which the taxpayer has not taken
1383 or is not taking title or in which he had no equity. Expense
1384 incurred in connection with earning and distributing nontaxable
1385 income is not an allowable deduction. Limitations on
1386 entertainment expenses shall conform to the provisions of the
1387 Internal Revenue Code of 1986.

1388 (b) **Interest.** All interest paid or accrued during the
1389 taxable year on business indebtedness, except interest upon the
1390 indebtedness for the purchase of tax-free bonds, or any stocks,
1391 the dividends from which are nontaxable under the provisions of
1392 this article; provided, however, in the case of securities
1393 dealers, interest payments or accruals on loans, the proceeds of
1394 which are used to purchase tax-exempt securities, shall be
1395 deductible if income from otherwise tax-free securities is
1396 reported as income. Investment interest expense shall be limited
1397 to investment income. * * * For the purposes of this paragraph,
1398 the phrase "interest upon the indebtedness for the purchase of
1399 tax-free bonds" applies only to the indebtedness incurred for the
1400 purpose of directly purchasing tax-free bonds and does not apply
1401 to any other indebtedness incurred in the regular course of the
1402 taxpayer's business. Any corporation, association, organization
1403 or other entity taxable under Section 27-7-23(c) shall allocate
1404 interest expense as provided in Section 27-7-23(c) (3) (I). The
1405 provisions deleted from this paragraph (1) (b) by Senate Bill No.
1406 2108, 2002 Regular Session, shall be deleted retroactively to
1407 January 1, 1990, and shall not apply to any transaction (whether



1408 occurring before, on, or after January 1, 1990), except those
1409 provisions shall not be retroactively deleted as to, and shall
1410 apply to, a transaction to the extent those provisions have been
1411 applied to the transaction in a taxable year of the taxpayer that
1412 is (i) subject to a settlement with or decision by the
1413 commissioner that is final and nonappealable as of the date of
1414 passage of Senate Bill No. 2108, 2002 Regular Session, or (ii)
1415 subject to a judgment by a court of this state that is final and
1416 nonappealable as of the date of passage of Senate Bill No. 2108,
1417 2002 Regular Session.

1418 (c) **Taxes.** Taxes paid or accrued within the taxable
1419 year, except state and federal income taxes, excise taxes based on
1420 or measured by net income, estate and inheritance taxes, gift
1421 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
1422 use taxes unless incurred as an item of expense in a trade or
1423 business or in the production of taxable income. In the case of
1424 an individual, taxes permitted as an itemized deduction under the
1425 provisions of subsection (2)(a) of this section are to be claimed
1426 thereunder.

1427 (d) **Business losses.**

1428 (i) Losses sustained during the taxable year not
1429 compensated for by insurance or otherwise, if incurred in trade or
1430 business, or nonbusiness transactions entered into for profit.

1431 (ii) Limitations on losses from passive activities
1432 and rental real estate shall conform to the provisions of the
1433 Internal Revenue Code of 1986.

1434 (e) **Bad debts.** Losses from debts ascertained to be
1435 worthless and charged off during the taxable year, if sustained in
1436 the conduct of the regular trade or business of the taxpayer;
1437 provided, that such losses shall be allowed only when the taxpayer
1438 has reported as income, on the accrual basis, the amount of such
1439 debt or account.



1440 (f) **Depreciation.** A reasonable allowance for
1441 exhaustion, wear and tear of property used in the trade or
1442 business, or rental property, and depreciation upon buildings
1443 based upon their reasonable value as of March 16, 1912, if
1444 acquired prior thereto, and upon cost if acquired subsequent to
1445 that date.

1446 (g) **Depletion.** In the case of mines, oil and gas
1447 wells, other natural deposits and timber, a reasonable allowance
1448 for depletion and for depreciation of improvements, based upon
1449 cost, including cost of development, not otherwise deducted, or
1450 fair market value as of March 16, 1912, if acquired prior to that
1451 date, such allowance to be made upon regulations prescribed by the
1452 commissioner, with the approval of the Governor.

1453 (h) **Contributions or gifts.** Except as otherwise
1454 provided in subsection (2)(a) of this section for individuals,
1455 contributions or gifts made by corporations within the taxable
1456 year to corporations, organizations, associations or institutions,
1457 including Community Chest funds, foundations and trusts created
1458 solely and exclusively for religious, charitable, scientific or
1459 educational purposes, or for the prevention of cruelty to children
1460 or animals, no part of the net earnings of which inure to the
1461 benefit of any private stockholder or individual. This deduction
1462 shall be allowed in an amount not to exceed twenty percent (20%)
1463 of the net income. Such contributions or gifts shall be allowable
1464 as deductions only if verified under rules and regulations
1465 prescribed by the commissioner, with the approval of the Governor.
1466 Contributions made in any form other than cash shall be allowed as
1467 a deduction, subject to the limitations herein provided, in an
1468 amount equal to the actual market value of the contributions at
1469 the time the contribution is actually made and consummated.

1470 (i) **Reserve funds - insurance companies.** In the case
1471 of insurance companies the net additions required by law to be
1472 made within the taxable year to reserve funds when such reserve



1473 funds are maintained for the purpose of liquidating policies at
1474 maturity.

1475 (j) **Annuity income.** The sums, other than dividends,
1476 paid within the taxpayer year on policy or annuity contracts when
1477 such income has been included in gross income.

1478 (k) **Contributions to employee pension plans.**
1479 Contributions made by an employer to a plan or a trust forming
1480 part of a pension plan, stock bonus plan, disability or
1481 death-benefit plan, or profit-sharing plan of such employer for
1482 the exclusive benefit of some or all of his, their, or its
1483 employees, or their beneficiaries, shall be deductible from his,
1484 their, or its income only to the extent that, and for the taxable
1485 year in which, the contribution is deductible for federal income
1486 tax purposes under the Internal Revenue Code of 1986 and any other
1487 provisions of similar purport in the Internal Revenue Laws of the
1488 United States, and the rules, regulations, rulings and
1489 determinations promulgated thereunder, provided that:

1490 (i) The plan or trust be irrevocable.

1491 (ii) The plan or trust constitute a part of a
1492 pension plan, stock bonus plan, disability or death-benefit plan,
1493 or profit-sharing plan for the exclusive benefit of some or all of
1494 the employer's employees and/or officers, or their beneficiaries,
1495 for the purpose of distributing the corpus and income of the plan
1496 or trust to such employees and/or officers, or their
1497 beneficiaries.

1498 (iii) No part of the corpus or income of the plan
1499 or trust can be used for purposes other than for the exclusive
1500 benefit of employees and/or officers, or their beneficiaries.

1501 Contributions to all plans or to all trusts of real or
1502 personal property (or real and personal property combined) or to
1503 insured plans created under a retirement plan for which provision
1504 has been made under the laws of the United States of America,
1505 making such contributions deductible from income for federal



1506 income tax purposes, shall be deductible only to the same extent
1507 under the Income Tax Laws of the State of Mississippi.

1508 (1) Net operating loss carrybacks and carryovers. A
1509 net operating loss for any taxable year ending after December 31,
1510 1993, and taxable years thereafter, shall be a net operating loss
1511 carryback to each of the three (3) taxable years preceding the
1512 taxable year of the loss. If the net operating loss for any
1513 taxable year is not exhausted by carrybacks to the three (3)
1514 taxable years preceding the taxable year of the loss, then there
1515 shall be a net operating loss carryover to each of the fifteen
1516 (15) taxable years following the taxable year of the loss
1517 beginning with any taxable year after December 31, 1991.

1518 For any taxable year ending after December 31, 1997, the
1519 period for net operating loss carrybacks and net operating loss
1520 carryovers shall be the same as those established by the Internal
1521 Revenue Code and the rules, regulations, rulings and
1522 determinations promulgated thereunder.

1523 The term "net operating loss," for the purposes of this
1524 paragraph, shall be the excess of the deductions allowed over the
1525 gross income; provided, however, the following deductions shall
1526 not be allowed in computing same:

1527 (i) No net operating loss deduction shall be
1528 allowed.

1529 (ii) No personal exemption deduction shall be
1530 allowed.

1531 (iii) Allowable deductions which are not
1532 attributable to taxpayer's trade or business shall be allowed only
1533 to the extent of the amount of gross income not derived from such
1534 trade or business.

1535 Any taxpayer entitled to a carryback period as provided by
1536 this paragraph may elect to relinquish the entire carryback period
1537 with respect to a net operating loss for any taxable year ending
1538 after December 31, 1991. The election shall be made in the manner



1539 prescribed by the State Tax Commission and shall be made by the
1540 due date, including extensions of time, for filing the taxpayer's
1541 return for the taxable year of the net operating loss for which
1542 the election is to be in effect. The election, once made for any
1543 taxable year, shall be irrevocable for that taxable year.

1544 (m) **Amortization of pollution or environmental control**
1545 **facilities.** Allowance of deduction. Every taxpayer, at his
1546 election, shall be entitled to a deduction for pollution or
1547 environmental control facilities to the same extent as that
1548 allowed under the Internal Revenue Code and the rules,
1549 regulations, rulings and determinations promulgated thereunder.

1550 (n) **Dividend distributions - real estate investment**
1551 **trusts.** "Real estate investment trust" (hereinafter referred to
1552 as REIT) shall have the meaning ascribed to such term in Section
1553 856 of the federal Internal Revenue Code of 1986, as amended. A
1554 REIT is allowed a dividend distributed deduction if the dividend
1555 distributions meet the requirements of Section 857 or are
1556 otherwise deductible under Section 858 or 860, federal Internal
1557 Revenue Code of 1986, as amended. In addition:

1558 (i) A dividend distributed deduction shall only be
1559 allowed for dividends paid by a publicly traded REIT. A qualified
1560 REIT subsidiary shall be allowed a dividend distributed deduction
1561 if its owner is a publicly traded REIT.

1562 (ii) Income generated from real estate contributed
1563 or sold to a REIT by a shareholder or related party shall not give
1564 rise to a dividend distributed deduction, unless the shareholder
1565 or related party would have received the dividend distributed
1566 deduction under this chapter.

1567 (iii) A holding corporation receiving a dividend
1568 from a REIT shall not be allowed the deduction in Section
1569 27-7-15(4)(t).

1570 (iv) Any REIT not allowed the dividend distributed
1571 deduction in the federal Internal Revenue Code of 1986, as



1572 amended, shall not be allowed a dividend distributed deduction
1573 under this chapter.

1574 The commissioner is authorized to promulgate rules and
1575 regulations consistent with the provisions in Section 269 of the
1576 federal Internal Revenue Code of 1986, as amended, so as to
1577 prevent the evasion or avoidance of state income tax.

1578 (o) **Contributions to college savings trust fund**
1579 **accounts.** Contributions or payments to a Mississippi Affordable
1580 College Savings Program account are deductible as provided under
1581 Section 37-155-113. Payments made under a prepaid tuition
1582 contract entered into under the Mississippi Prepaid Affordable
1583 College Tuition Program are deductible as provided under Section
1584 37-155-17.

1585 (2) **Individual nonbusiness deductions.**

1586 (a) The amount allowable for individual nonbusiness
1587 itemized deductions for federal income tax purposes where the
1588 individual is eligible to elect, for the taxable year, to itemize
1589 deductions on his federal return except the following:

- 1590 (i) The deduction for state income taxes paid;
1591 (ii) The deduction for gaming losses from gaming
1592 establishments licensed under the Mississippi Gaming Control Act;
1593 (iii) The deduction for taxes collected by
1594 licensed gaming establishments pursuant to Section 27-7-901.

1595 (b) In lieu of the individual nonbusiness itemized
1596 deductions authorized in paragraph (a), for all purposes other
1597 than ordinary and necessary expenses paid or incurred during the
1598 taxable year in carrying on any trade or business, an optional
1599 standard deduction of:

- 1600 (i) Three Thousand Four Hundred Dollars
1601 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
1602 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
1603 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter



1604 in the case of married individuals filing a joint or combined
1605 return;

1606 (ii) One Thousand Seven Hundred Dollars
1607 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
1608 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
1609 Three Hundred Dollars (\$2,300.00) for each calendar year
1610 thereafter in the case of married individuals filing separate
1611 returns;

1612 (iii) Three Thousand Four Hundred Dollars
1613 (\$3,400.00) in the case of a head of family; or

1614 (iv) Two Thousand Three Hundred Dollars
1615 (\$2,300.00) in the case of an individual who is not married.

1616 In the case of a husband and wife living together, having
1617 separate incomes, and filing combined returns, the standard
1618 deduction authorized may be divided in any manner they choose. In
1619 the case of separate returns by a husband and wife, the standard
1620 deduction shall not be allowed to either if the taxable income of
1621 one of the spouses is determined without regard to the standard
1622 deduction.

1623 (c) A nonresident individual shall be allowed the same
1624 individual nonbusiness deductions as are authorized for resident
1625 individuals in paragraph (a) or (b) of this subsection; however,
1626 the nonresident individual is entitled only to that proportion of
1627 the individual nonbusiness deductions as his net income from
1628 sources within the State of Mississippi bears to his total or
1629 entire net income from all sources.

1630 (3) Nothing in this section shall permit the same item to be
1631 deducted more than once, either in fact or in effect.

1632 **SECTION 3.** This act shall take effect and be in force from
1633 and after its passage.

