

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 3009

1 AN ACT TO AMEND SECTION 27-7-9, MISSISSIPPI CODE OF 1972, TO
2 REMOVE THE PROVISION IN THE INCOME TAX LAW THAT PROVIDES NO GAIN
3 SHALL BE RECOGNIZED FROM THE LIQUIDATION OF CERTAIN ASSETS OF
4 DOMESTIC CORPORATIONS; AND FOR RELATED PURPOSES.

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

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

8 27-7-9. (a) **Except as provided in Sections 27-7-95 through**
9 **27-7-103, determination of amount of gain or loss.**

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

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

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

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

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

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

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

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

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

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

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

62 ascertaining gain or loss from the sale or other disposition
63 thereof shall be the fair market price or value of such property
64 at the time of acquisition.

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

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

90 (6) **Property acquired in tax-free exchanges.** If the
91 property was acquired upon an exchange described in subsection
92 (f), the basis shall be the same as in the case of the property
93 exchanged, decreased in the amount of any money received by the
94 taxpayer and increased in the amount of gain or decreased in the

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

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

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

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

128 shall be increased in the amount of the difference, or if the
129 repurchase price was less than the sales price, such basis shall
130 be decreased in the amount of the difference.

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

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

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

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

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

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

159 (2) **Substituted basis.** Whenever it appears that the
160 basis of the property in the hands of a taxpayer is a substituted

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

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

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

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

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

189 (C) **Transfers to corporation controlled by**
190 **transferor.** No gain or loss shall be recognized if property is
191 transferred to a corporation by one or more persons solely in
192 exchange for stock or securities in such corporation, and if
193 immediately after the exchange such person or persons are in

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

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

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

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

221 (4) **Distribution of stock on reorganization.** If in
222 pursuance of a plan of reorganization, there is distributed to a
223 shareholder in a corporation, a party to the reorganization, stock
224 or securities in such corporation or in another corporation, a
225 party to the reorganization, without the surrender by such
226 shareholder of stock or securities in such corporation, no gain to

227 the distributee from the receipt of such stock or securities shall
228 be recognized.

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

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

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

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

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

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

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

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

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

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

290 (10) **Sales of certain interests in financial**
291 **institutions domiciled in Mississippi, domestic corporations,**
292 **domestic limited partnerships or domestic limited liability**

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

303 * * *

304 (g) **Reorganization defined.** The term "reorganization"
305 means:

306 (1) A statutory merger or consolidation;

307 (2) The acquisition by one (1) corporation, in exchange
308 solely for all or a part of its voting stock (or in exchange
309 solely for all or a part of the voting stock of a corporation
310 which is in control of the acquiring corporation), of stock of
311 another corporation if, immediately after the acquisition, the
312 acquiring corporation has control of such other corporation, or of
313 substantially all the properties of another corporation;

314 (3) A transfer by a corporation of all or a part of its
315 assets to another corporation if immediately after the transfer
316 the transferor, or one or more of its shareholders (including
317 persons who were shareholders immediately before the transfer), or
318 any combination thereof, is in control of the corporation to which
319 the assets are transferred;

320 (4) A recapitalization; or

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

323 (h) **Party to a reorganization defined.** The term "a party to
324 a reorganization" includes a corporation resulting from a
325 reorganization and includes both corporations in the case of an

326 acquisition by one (1) corporation of at least a majority of the
327 voting stock and at least a majority of the total number of shares
328 of all other classes of stock of another corporation.

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

333 (j) **Special rules.**

334 (1) **Liquidation of subsidiaries.** A transfer to a
335 parent corporation from its subsidiary of property distributed in
336 complete liquidation of the subsidiary shall result in no
337 recognized gain or loss if the basis of the property in the hands
338 of the parent corporation is the same as it was in the hands of
339 the subsidiary.

340 (2) **Gain or loss on sales or exchanges in connection**
341 **with certain liquidations.** Corporations adopting a plan of
342 complete liquidation under the provisions of the Internal Revenue
343 Code shall recognize the gain or loss from the sale or exchange of
344 property by the corporation under said plan. The total gain or
345 loss from the liquidating distributions shall be recognized by the
346 shareholders; however, a credit for the tax paid by the
347 liquidating corporation on the gain from the sale or exchange of
348 property under the plan of liquidation will be allowed to the
349 extent of any tax liability to the shareholders. The corporation
350 shall provide to the State Tax Commission a list of all
351 shareholders with their percentage of ownership, distribution, tax
352 credit allowed and any other information requested.

353 (3) **Distribution of stock and securities of a**
354 **controlled corporation.** No gain shall be recognized on a
355 distribution to a stockholder of a corporation if such gain would
356 not be recognized to such stockholder for federal income tax
357 purposes under the provisions of Section 355 of the federal
358 Internal Revenue Code.

359 (4) Notwithstanding the other provisions of this
360 section, a corporation or other entity that is involved in
361 restructuring, reorganizing, distributing assets or profits, or
362 changing ownership that results in an adjustment to its asset
363 basis is required to report a gain in the year such transaction
364 occurs on any such transaction when the transaction involves
365 assets owned or used in this state, or otherwise represents assets
366 owned or used in this state. If a transfer of income or a change
367 in asset valuation occurs on the tax records of the taxpayer, such
368 transaction shall result in taxation to this state to the extent
369 of the transfer of income or change in asset valuation.

370 (5) If a corporation or other entity makes an Internal
371 Revenue Code Section 338 election, or other similar election under
372 which the aggregate basis in assets are increased on the tax
373 records of the taxpayer, then a similar election must also be made
374 for Mississippi purposes, but the gain must be recognized by the
375 corporation in which the increase in basis of the assets occurs.
376 The corporation or other entity is allowed to increase its basis
377 by the amount of gain recognized. An aggregate write-down of
378 assets is not allowed. The parent corporation shall recognize the
379 gain on the disposition of its stock.

380 (6) For state tax purposes, a corporation or other
381 legal entity is considered separate from its shareholders,
382 affiliated corporations or other entities. If a corporation or
383 other legal entity enters into any transaction that is for the
384 benefit of its shareholders or for the benefit of an affiliated
385 corporation without an equal mutual business benefit of the
386 corporation, then, the transaction will be adjusted or eliminated
387 to arrive at taxable income to this state. All transactions
388 entered into by a corporation must be at "arms-length." If
389 requested by the commissioner, the taxpayer must be able to
390 substantiate that the transaction occurred at "arms-length." If
391 not, the transaction may be adjusted to the satisfaction of the

392 commissioner. In determining whether the transaction occurred at
393 arms-length, the commissioner shall consider the following:

394 (A) Whether the transaction is in compliance with
395 the federal regulations promulgated under Internal Revenue Code
396 Section 482;

397 (B) Whether the transaction was done for a valid
398 business purpose;

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

401 (D) Whether the transaction is consistent with the
402 results that would have been realized if uncontrolled taxpayers
403 had engaged in the same transaction under the same circumstances;
404 and

405 (E) Other factors which support the conclusion
406 that income is being shifted to avoid the tax imposed by this
407 chapter.

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

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

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

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

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

421 (1) Distributions of the property of a corporation,
422 including partial and complete liquidations, shall be recognized
423 by the distributing corporation and the gain or loss shall be
424 computed on the difference of the fair market value of the assets

425 distributed and their basis. The total gain or loss from the
426 distributions to the shareholders shall be recognized by the
427 shareholders subject to subsections (f)(8) and (j)(1); however, a
428 credit for the tax paid by the distributing corporation on the
429 gain from the sale or exchange of property under the plan of
430 distribution will be allowed to the extent of any liability to the
431 shareholders. The corporation shall provide to the State Tax
432 Commission a list of all shareholders with their percentage of
433 ownership, distribution, tax credit allowed and any other
434 information requested.

435 (2) **Source of distributions.** For the purposes of this
436 act, every distribution is made out of earnings or profits to the
437 extent thereof, and from the most recently accumulated earnings
438 and profits. Any earnings or profit accumulated, or increase in
439 value of property acquired, before March 16, 1912, may be
440 distributed exempt from tax (after the earnings and profits
441 accumulated after March 16, 1912, have been distributed), but any
442 such tax-free distribution shall be applied against and reduce the
443 basis of the stock provided in subsection (d).

444 (3) **Distributions in liquidation.** Amounts distributed
445 in complete liquidation of a corporation shall be treated as in
446 full payment in exchange for the stock, and amounts distributed in
447 partial liquidation of a corporation shall be treated as in part
448 or full payment in exchange for the stock. The gain or loss to
449 the distributee resulting from such exchange shall be determined
450 under subsection (a), but shall be recognized only to the extent
451 provided in subsection (f). In the case of amounts distributed in
452 partial liquidation, the part of such distribution which is
453 property chargeable to capital account shall not be considered a
454 distribution of earnings or profits within the meaning of
455 paragraph (2) of this subsection for the purpose of determining
456 the taxability of subsequent distributions by the corporations.

457 (4) **Other distributions.** If any distribution (not in
458 partial or complete liquidation) made by a corporation to its
459 shareholders, is not out of increase in value of property accrued
460 before March 16, 1912, and is not out of earnings or profits, then
461 the amount of such distribution shall be applied against and
462 reduce the basis of the stock provided in subsection (d), and if
463 in excess of such basis, such excess shall be taxable in the same
464 manner as a gain from the sale or exchange of property.

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

467 (6) **Cancellation or redemption of stock.** If a
468 corporation cancels or redeems its stock (whether or not such
469 stock was issued as a stock dividend) at such time and in such
470 manner as to make the distribution and cancellation or redemption
471 in whole or in part essentially equivalent to the distribution of
472 a taxable dividend, the amount so distributed in redemption or
473 cancellation of the stock, to the extent that it represents a
474 distribution of earnings or profits accumulated after March 16,
475 1912, shall be treated as a taxable dividend.

476 (7) **"Amounts distributed in partial liquidation"**
477 **defined.** As used in this subsection, the term "amounts
478 distributed in partial liquidation" means distribution by a
479 corporation in complete cancellation or redemption of a part of
480 its stock, or one of a series of distributions in complete
481 cancellation or redemption of all or a portion of its stock.

482 (8) **Distributions of stock pursuant to order enforcing**
483 **the Antitrust Laws.** Any distribution of stock which is made
484 pursuant to the order of any court enforcing the Antitrust Laws of
485 the United States, or of any state, shall be a distribution which
486 is not out of earnings and profits of the distributing
487 corporation, but the value of the stock so distributed shall be
488 applied against and reduce the basis of the stock of the
489 distributing corporation provided in subsection (d), and if in

490 excess of such basis, such excess shall be taxable in the same
491 manner as a gain from the sale or exchange of property.

492 **SECTION 2.** This act shall take effect and be in force from
493 and after its passage.