Title 35 Mississippi State Tax Commission

Part III Income and Franchise

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Subpart 01 Definitions and Miscellaneous

Chapter 01 Definitions

100 **"Gross income"** means all income from whatever source derived, unless excluded by law and includes income realized in any form, whether in money, property or services. Gross income includes compensation for personal and professional services, wages, fees, business income, profits from sales, rentals and dealings in property, interest, dividends and gains, profits and income derived from any source whatever, including income from governmental agencies and subdivisions thereof, annuities, reacquired property, securities, insurance premiums, reinsurance premiums, considerations for supplemental insurance contracts, transactions of any business carried on within the state for gain or profit, income from intangibles if such property has acquired a business, commercial or actual situs in this state, a partner's distributive share of partnership gross income, income in respect of a decedent, and income from an interest in an estate or trust unless exempt or otherwise excluded, in whole or in part, from tax by law. Gross income, however, is not limited to the items so enumerated. In the case of a taxpayer reporting net income under this act on a basis of receipts and disbursements, there should be included in gross income only actual and constructive receipts of income. Taxpayers reporting on the accrual basis must include in gross income amounts received by them or accrued to them.

101 In a manufacturing, merchandising or mining business, **"gross income"** means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources.

102 **"Net income"** means gross income less allowable business expenses. The business deductions are in general, though not exclusively, expenditures, other than capital expenditures, in connection with the production of income.

103 **"Taxable income"** with respect to individuals, estates and trusts, means total gross income less allowable expenses incurred in connection with the taxpayer's trade or business, allowable personal deductions and applicable personal and additional exemptions. Taxable income with respect to corporations, associations and partnerships, means total gross income less allowable expenses and contributions.

104 **"Domestic taxpayer"**, when applied to any corporation, association, and partnerships, means created, organized or domesticated under the laws of the State of Mississippi. The fact that a domestic taxpayer moves its principal place of business without the state does not preclude its classification as a domestic organization for income tax purposes.

105 **"Foreign taxpayer"**, when applied to any corporation or association, including partnerships, means created or organized under the laws of a state other than Mississippi. The fact that a foreign taxpayer carries on its business or occupation in Mississippi does not set aside the foreign construction of the corporation, association or partnership.

106 The term **"farm"** embraces the farm in the ordinary accepted sense, and includes, but is not limited to stock, dairy, poultry, fish, fruit and truck farms; also plantations, and all land used for farming operations. All individuals, partnerships or corporations that cultivate, operate or manage farms for gain or profit, either as owners or tenants, are designated as farmers. A fish farm is an area where fish are grown or raised, as opposed to merely caught or harvested; that is, an area where they are artificially fed, protected, cared for, etc.

107 A taxpayer is engaged in the "**business of farming**" if he cultivates, operates or manages a farm for gain or profit, either as owner or tenant. A taxpayer who receives a rental (either in cash or in kind) which is based upon farm production is engaged in the business of farming. However, a taxpayer who receives a fixed rental (without reference to production) is engaged in the business of farming only if he participates to a material extent in the operation or management of the farm. A person cultivating or operating a farm for hobby, recreation or pleasure rather than a profit is not engaged in the business of farming.

108 (Reserved)

35.III.1.01 revised effective January 7, 2019

Chapter 02 Accounting Periods

100 Every taxpayer must compute taxable income based on their tax year. A tax year is an annual accounting period used by the taxpayer for keeping records and reporting income and expenses. A tax year may be a calendar year, which is a period of twelve (12) consecutive months ending on December 31st, or a fiscal year, which is a period of twelve (12) consecutive months ending on the last day of any month except December 31st.

101 Miss. Code Ann Section 27-7-13(4) provides that if a taxpayer's annual accounting period is not a proper fiscal year ending or if the taxpayer has no annual accounting period or does not maintain books and records that identify an accounting period, that the taxable period will be based on a calendar year.

102 S Corporations, fiduciaries and partnerships are required to file for the same period for Mississippi as for federal purposes.

103 Taxpayers required to file an individual income tax return will file using a calendar year tax period unless they have been granted permission by the Commissioner to file otherwise.

104 Pursuant to Miss. Code Ann. Section 27-7-43 a taxpayer will only be allowed to change an accounting period when it has received approval from the Commissioner. If permission is granted by the federal government to change the accounting period, then state permission is automatic provided the taxpayer attaches a copy of the written federal approval to the first state return filed for the new period. If the Commissioner determines that such change in accounting period results in an understatement of income, the Commissioner will deny the final approval.

105 When the accounting period is changed, it is required that the tax on the first return be computed by placing the income on an annual basis. The annualized income is determined by dividing the income for the period by the number of months in the short period and multiplying the result by twelve (12). The tax computed on the annualized taxable income is multiplied by the number of months in the short period and divided by twelve (12).

106 (Reserved)

35.III.1.02 revised effective January 7, 2019

Chapter 03 Accounting Basis

100 Basis of accounting refers to the methodology under which income and expenses are recognized in financial statements and records. Every taxpayer must use a consistent accounting method to report income and expenses. The manner by which a taxpayer computes the amount of income, gains, losses, deductions and credits, and the tax year for which each item must be reported, constitutes the taxpayer's tax accounting method. The most commonly used accounting methods are the cash basis and the accrual basis.

101 The cash basis (cash receipts and disbursements) is the accounting method used by most individuals. Income is generally reported in the year that it is actually or constructively received in the form of cash, or its equivalent, or other property. Deductions or credits are generally taken for the year in which the related expenditures are actually paid, unless they should be taken in a different period to more clearly reflect income, such as depreciation allowances and prepaid expenses.

102 Bad debts do not constitute a loss as such under the cash receipts and disbursements method. The expenses, liabilities or credits of one year cannot be used to reduce the income of a subsequent year.

103 The accrual basis is the accounting method that records revenues and expenses when they are incurred, regardless of when cash is exchanged. Expense are deductible on the accrual basis in the year incurred, regardless of when payment is made. The purpose of an accrual method is to match income and expenses in the correct year.

104 The net income shall be determined in accordance with the accounting basis employed by the taxpayer, whether it be a fiscal year or a calendar year and in accordance with the method of accounting employed whether it be cash or accrual. The accounting method used by a taxpayer must clearly reflect income and expenses. The taxpayer's method of accounting must be consistent; no method of accounting is regarded as clearly reflecting income unless all items of gross profit and deduction are treated with consistency from year to year.

105 The initial return may be filed in accordance with the basis and method elected by the taxpayer as long as it is in keeping with generally accepted principles, is in accordance with the basis and method of accounting regularly used by the taxpayer, and reflects the

taxpayer's correct income. Arbitrary changes in the basis or method of accounting employed by the taxpayer are not permitted except in cases where such changes have been approved in advance by the Commissioner.

106 Where no accounting basis has been established by the taxpayer, or where the method employed does not clearly reflect income, the Commissioner shall prescribe a method that will clearly reflect income, and the taxpayer for whom the method is prescribed shall be bound by the same until such time as it is shown to the satisfaction of the Commissioner that a method proposed by the taxpayer will reflect such income with equal results.

107 The expenses, liabilities or credits of one year cannot be used to reduce the income of a subsequent year. If a taxpayer does not within any year properly deduct their expenses, losses, interest, taxes or other charges, they cannot deduct them from the income of the next or any succeeding year.

108 (Reserved)

35.III.1.03 revised January 7, 2018

Chapter 04 Inventories

100 The Commissioner will follow Federal Rules, Regulations and Revenue Procedures relating to inventories as are not deemed contrary to the context and intent of Mississippi Law.

101 (Reserved)

102 (Reserved)

Chapter 05 Hobby Losses

100 The Commissioner will follow Federal Rules, Regulations and Revenue Procedures relating to Hobby Losses as are not deemed contrary to the context and intent of Mississippi Law.

101 (Reserved)

35.III.1.05 revised effective January 7, 2019

Chapter 06 Reserved

35.III.1.06 revised effective January 7, 2019

Chapter 07 Reserved

35.III.1.07 revised January 7, 2019

Chapter 08 Contractors

100 The Commissioner will follow federal rules, regulations and revenue procedures relating to Contractors as are not deemed contrary to the context and intent of Mississippi Law.

101 (Reserved)

35.III.1.08 revised effective January 7, 2019

Chapter 09 Income Averaging

100 Mississippi law does not authorize income averaging for taxpayers having annual fluctuations in income over several years. Income earned, realized or recognized in the taxable year must be reported in full for that year without the benefit of any method of averaging.

101 (Reserved)

102 (Reserved)

Chapter 10 Statute of Limitations

100 The Commissioner, pursuant to Miss. Code Ann. Section 27-7-49 has three (3) years from the due date of the return or the date the return was filed, whichever is later, to make a determination of tax overpayment or deficiency. Exceptions to this general rule are:

1. Where a taxpayer has been notified by certified mail prior to the expiration of the three-year examination period that his or her return is being examined. The Commissioner has one year after the expiration of the three-year period to examine records and/or returns, and to assess any additional tax due.
2. Where a taxpayer filed a false or fraudulent return with the intent to evade tax or where a taxpayer had a filing requirement but no tax return was filed.
3. Where the Internal Revenue Service has increased the income of a taxpayer. Assessments of Mississippi income tax resulting from changes made to a taxpayer's federal return by the Internal Revenue Service must be made within three (3) years of the date the Internal Revenue Service disposes of the liability in question. “Disposes of the tax liability in question” means the date the Department of Revenue receives notice from the Internal Revenue Service of the change in the taxpayer’s reported taxable income.

101 In the case of a taxpayer seeking a refund or a reduction in the amount due on a particular return, a taxpayer must apply within three (3) years from the due date of the return or where an extension was granted, three (3) years from the date the return was filed, provided the return was filed on or before the last day of the extension period authorized by the Commissioner.

102 When the Internal Revenue Service has made a change which results in a decrease of a taxpayer's Mississippi income tax liability, the Commissioner will allow the reduction within three (3) years of the date the Internal Revenue Service disposes of the liability in question.

103 When the reportable taxable income of a taxpayer has been decreased by the carryback of a net casualty loss deduction or a net operating loss deduction, the three-year examination period is determined by the tax year in which the loss was incurred.

104 (Reserved)

35.III.1.10 revised effective January 7, 2019

Chapter 11 Extension of Time to File

100 The Commissioner may grant a reasonable extension of time beyond the statutory due date to file any income or franchise tax return or annual report. The authorized extension of time to file does not extend the time for payment of the income or franchise tax due. Interest and penalty shall apply on any underpayment of tax. Taxpayers having a tax liability who request an extension of time must remit the tax due with the proper Mississippi Application for Extension on or before the due date of their return to receive an automatic extension of time to file their tax returns.

101 If no tax liability exists on the due date of the return, the Commissioner will automatically recognize an extension of time authorized and granted by the Internal Revenue Service for the filing of annual income tax returns. Proof of the authorized extension must be maintained with the taxpayer's records. If proof cannot be presented upon request, extension may not be allowed.

102 (Reserved)

103 (Reserved)

Chapter 12 Credit for Income Tax Paid to Another State

100 Pursuant to Miss. Code Ann. Section 27-7-77, Mississippi residents are required to include their total gross income from all sources on their Mississippi income tax return, regardless of where the income was earned or realized. Mississippi residents who earned income in other states and are required to pay an income tax to another state(s) on income that is also subject to Mississippi income tax are allowed a credit for income tax paid to another state against Mississippi tax due. The credit must be claimed in the same taxable year in which the tax is paid to the other state. Non-residents are not allowed this credit.

101 "Another state" or "other state" means a state in the United States other than Mississippi, a territory of the United States or the District of Columbia. This credit does not apply to

taxes paid to any foreign country or to taxes imposed by any city, county or other local taxing jurisdiction.

102 The amount of the credit is subject to the following limitations:

1. The credit may not exceed the amount of income tax due the State of Mississippi.
2. The credit may not exceed the amount of income tax actually paid to the other state. (Any income tax credits allowed by another state will not be treated as taxes actually paid.)
3. The credit may not exceed an amount computed by applying the highest applicable Mississippi rates to the net taxable income reported to the other state. Highest rates are meant to mean the highest rates at which the net taxable income reported to the other state is taxable by the State of Mississippi.

103 Copies of withholding statements are not sufficient documentation, as they indicate the amount withheld by the other state not the actual tax liability to the other state. The required documentation, as outlined below, must be attached to the Mississippi Individual Income Tax Return to claim the credit or the credit may be disallowed.

1. The Tax Credit For Income Tax Paid To One Or More Other States form; and
2. A copy of the actual income tax return(s) filed with the other state(s); or
3. Documentation of the amount of tax paid to another state on the taxpayer's behalf by another entity, such as a federal schedule K-1. This will only be accepted in instances where the other state's return is not required to be filed by the taxpayer.

104 If a taxpayer amends the amount of income tax paid to the other state on which the Mississippi credit was based, the taxpayer must file an amended Mississippi Individual Income Tax Return to recalculate the amount of credit allowed.

105 (Reserved)

35.III.1.12 revised effective January 7, 201

Chapter 13 Reporting or Changing Elections—Change in Reporting Methods

100 Permission must be granted in writing by the Commissioner before any election can be changed. If a taxpayer has an option to make an election and does not knowingly make such election, but reports to Mississippi as though an election had been made, the taxpayer is required to continue filing returns using the same method until granted written permission by the Commissioner to change.

101 Additionally, if a taxpayer has an election available and completes his return incorrectly (such as, but not limited to using method which utilizes only part of the requirements of a certain election), the Commissioner shall determine whether, in fact, an election has been made and what method of reporting is to be used.

102 Also, permission must be granted in writing by the Commissioner before an accounting method, method of filing or any other methodology change is used by the taxpayer.

103 (Reserved)

104 (Reserved)

Subpart 02 Gross Income

Chapter 01 Constructive Receipt of Income

100 Income which is credited to the account of, or set apart, for a taxpayer and which may be used by the taxpayer at any time is subject to tax for the year during which the income is credited or set apart, even though the taxpayer does not have direct possession. To constitute receipt, the income must be credited or set apart to the taxpayer without any substantial limitation or restriction as to the time or the manner of payment or condition upon which payment is to be made, and must be made available to be drawn at any time, and its receipts brought within the taxpayer's control and disposition.

101 If interest coupons have matured and are payable, but have not been cashed, such interest, though not collected when due and payable, shall be included in gross income for the year during which the coupons mature, unless it can be shown that there are no funds available for payment of interest during such year. The interest shall be included in gross income even though the coupons are exchanged for other property instead of eventually being cashed. The amount of defaulted coupons is income for the year in which paid.

102 Dividends on corporate stock are subject to tax when unqualifiedly made subject to the demand of the shareholder. If a dividend is declared payable on December 31, and the corporation mailed the checks so that the shareholder would not receive them until January of the following year, the dividends are not considered to have been subject to the demand of the shareholders prior to January, when the checks were actually received.

103 Interest credited on saving bank deposits is income to the depositor when credited. An amount credited to shareholders of a building and loan association, when such credit passes without restriction to the shareholder, has a taxable status as income for the year of the credit. If the shares are restricted by a maturity date, the amount credited will be income to the recipient when the shares mature, providing they are not available for withdrawal prior to maturity.

104 In the case of a taxpayer reporting income on a cash basis, there should be included in gross income only actual and constructive receipts of income. Taxpayers reporting on the accrual basis must include in gross income amounts received by them or accrued to them.

105 (Reserved)

35.III.2.01 revised effective June 15, 2019

Chapter 02 Compensation for Personal Services

100 Compensation means any form of payment made to an individual for services rendered as an employee for an employer; services performed as an employee representative and any separation or termination allowance. Compensation includes wages, salaries, bonuses, gifts, profit-sharing, commissions, tips, vacation pay, sick pay, medical benefits, disability, expense reimbursement, cash incentives, monetary value of non-cash incentives, and any other form of remuneration received in return for services. Compensation can be further defined as income received from the United States or any other state by officials or employees, thereof, whether in a civilian capacity or in the military or naval service, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, fees and other contributions received by a clergyman, evangelist or religious worker for services rendered.

101 Amounts withheld by the employer pursuant to the requirements of Federal and State Income Tax Laws, Federal Social Security Act, Civil Service Retirement Act, and similar retirement systems, unemployment compensation contracts, group life and health plans, stock purchase plans, etc., must be included in the gross income of the employee.

102 Pursuant to Miss. Code Ann. Section 27-7-16, amounts contributed to a tax-sheltered annuity plan, qualified retirement account and authorized deferred compensation plan shall not be considered elements of gross income in the tax year in which such amounts are deferred.

103 (Reserved)

35.III.2.02 revised effective June 15, 2019

Chapter 03 Gains Derived from Dealings in Property

100 Gain realized on the sale or exchange of property is included in gross income, unless excluded by law. For this purpose property includes tangible items, such as buildings, and intangible items, such as goodwill. Generally, the gain is the excess of the amount realized over the unrecovered cost or other basis of the property sold or exchanged. The specific rules for computing the amount of gain or loss are contained in Section 27-7-9 and the Regulations thereunder. When a part of a larger property is sold, the cost or other basis of the entire property shall be equitably apportioned among the several parts, and the gain realized or loss sustained on the part of the entire property sold is the difference between the selling price and the cost or other basis allocated to such part. Thus, gain or loss shall be determined at the time of sale of each part and not deferred until the disposal of the entire property.

101 Certain realized gains or losses on the sale of property are <u>not "recognized</u>," that is, are not included in or deducted from gross income at the time the transaction occurs. Gain or loss

from such sales or exchanges is generally recognized at some later time. Examples of such sales or exchanges are the following:

1. Certain formations and reorganizations of corporations. (See regulation on corporate organizations and reorganizations.)
2. Certain formations and distributions of partnerships.
3. Exchange of certain property, held for productive use or investment, for property of like kind if both properties are located within Mississippi.
4. Certain exchanges by a corporation of its stock for property.
5. Certain involuntary conversion of property if replaced.
6. Certain involuntary conversions of property for public use.
7. Sale or exchange of residence if replaced.
8. Sale or exchange of residence, with limitations, by a person age 55 and over. Federal rules and regulations will be followed.
9. Certain exchanges of insurance policies and annuity contracts.
10. Certain exchanges of stock for stock in the same corporation.

102 Gain realized and recognized on the sale or exchange of a capital asset is treated, for Mississippi income tax purposes, as ordinary income and total gain recognized on such sale must be included as an element of gross income.

103 Tax-Free exchanges of property will only be allowed when the property of both parties are located within Mississippi except in the case of exchange of a residence.

104 When an exchange of property would otherwise qualify as a tax free exchange, except that the property being acquired is located outside of Mississippi, the gain realized and recognized for the Mississippi property given up will be based on its fair market value less the basis of that property.

105 (Reserved)

106 (Reserved)

Chapter 04 Interest Income

100 As a general rule, interest received by or credited to the taxpayer constitutes gross income and is fully taxable, unless specifically exempt or excluded by statute. Interest income includes but is not limited to, interest on savings or other bank deposits; interest on coupon bonds; interest on an open account, a promissory note, a mortgage, or a corporate bond or debenture; the interest portion of a condemnation award; usurious interest; interest on legacies; and interest on life insurance proceeds held under an agreement to pay interest thereon.

101 United States Government. Interest on the obligations of the United States, its instrumentalities, its possessions or upon securities issued under authority of an act of Congress is wholly exempt from tax. The term **"obligations of the United States"** means any United States Government obligation used to finance the national debt, e. g. U.S.

Treasury Securities such as notes, bonds or certificates, U.S. Treasury bills or other instruments acknowledged by the U.S. Secretary of Treasury as an obligation of the United States.

102 State Government. Interest on the obligations of the State of Mississippi and political subdivisions thereof is wholly exempt from tax. The term **"obligations of the State of Mississippi"** means any obligation backed by the credit of the State of Mississippi. **"Any political subdivision"** means any county, city or town obligation, including special districts such as road, water, sewer, reclamation, drainage, levee, school or similar districts. Interest received upon obligations of any state or its political subdivisions other than Mississippi is taxable.

103 A taxpayer's pro rata portion of interest dividends distributed by a Regulated Investment Company, as defined in Section 851 of the Internal Revenue Code of 1986, is nontaxable to the extent that such pro rata portion represents interest received by the Regulated Investment Company from governmental securities which would be exempt for Mississippi income tax purposes if such governmental securities were directly held by the taxpayer.

104 If the governmental agency merely acts as guarantors on loans made by a private lender, such loans are not construed to be direct obligations of the government and the interest accruing on such loans is taxable. Interest income on obligations issued by or guaranteed by the following governmental Federal agencies is classified as follows:

105 Examples of **Taxable Interest Income**:

1. Federal National Mortgage Association
2. Government National Mortgage Association
3. Federal Home Loan Mortgage Corporation
4. U. S. Department of Agriculture Farmers Home Insured Notes
5. Inter-American Development Bank
6. International Bank of Reconstruction and Development (World Bank)
7. Merchant Marine Bonds
8. Federal Housing Administration

106 Examples of **Nontaxable Interest Income**

1. U. S. Treasury Bonds, Notes, Bills and Savings Bonds
2. Federal Land Bank
3. General Service Administration (GSA)
4. Tennessee Valley Authority (TVA)
5. U. S. Postal Service
6. Export-Import Bank of the United States
7. Federal Home Loan Bank
8. Federal Intermediate Credit Bank
9. Federal Farm Credit
10. Central Banks for Cooperative
11. Small Business Administration (SBA)
12. Washington Metropolitan Area Transit Authority

13. Regional Banks for Cooperatives

107 (Reserved)

108 (Reserved)

Chapter 05 Rents and Royalties

100 The Commissioner will follow Federal Rules, Regulations and Revenue Procedures relating to gross income from rents and royalties as are deemed not contrary to the context and intent of Mississippi Law.

101 (Reserved)

102 (Reserved)

Chapter 06 Dividend Income

100 Except as otherwise specifically provided, dividends are included in gross income under Section 27-7-15.

101 The term **"dividend"** for the purpose of the Mississippi Income Tax Law comprises any distribution of property in the ordinary course of business, even though extraordinary in amount, made by a domestic or foreign corporation to its shareholders out of earnings and profit.

102 Dividend income is taxable in full without any deductions or exclusions.

103 The earnings and profits of the taxable year shall be computed as of the close of such year, without reduction by reason of any distributions made during the taxable year. Liquidating dividends do not have the status of dividends for Mississippi income tax purposes. Such distributions constitute a return of investment and the gain or loss realized or sustained is one of capital.

104 Dividends received from a state or national bank and mutual building and loan associations organized under the laws of this state are taxable and should be included in the gross income of the taxpayer. Dividends of this nature received from banks and mutual building and loan associations domiciled in other states are likewise taxable.

105 Dividends received by a holding company from state or national banks, or other corporations or associations, are taxable to the holding company and should be included in gross income. The redistribution of such dividends by the holding company to its shareholders may be excluded from gross income of the shareholder provided such dividends as have already borne a Mississippi tax may be specifically identified in the possession of the shareholder or recipient.

106 If, however, for taxable years ending after December 31, 1978, the subsidiary corporation files a consolidated corporate income tax return, as authorized and permitted under Section 27-7-37, with its parent holding company and inter-company dividends are eliminated from the parent holding company's tax base, the redistribution of dividends by the holding company to its shareholders must be included in gross income of the shareholder since such dividends have not already borne a Mississippi tax prior to the receipt of same by such shareholders.

107 In order for dividend interest from a domestic mutual building and loan association to be excluded from gross income, it must be clearly shown to the satisfaction of the Commissioner that such dividend received has been used to reduce the total interest paid.

108 When stock is sold, and a dividend is both declared and paid after the sale, such dividend is not gross income to the seller. When stock is sold after the declaration of a dividend and after the date as of which the seller becomes entitled to the dividend, the dividend ordinarily is income to the seller. When stock is sold between the time of declaration and the time of payment of the dividend, and the sale takes place at such time that the purchaser becomes entitled to the dividend, the dividend ordinarily is income to him. The fact that the purchaser may have included the amount of the dividend in his purchase price in contemplation of receiving the dividend does not exempt him from tax, nor can the purchaser deduct the added amount he advanced to the seller in anticipation of the dividend. That added amount is merely part of the purchase price of the stock. In some cases, however, the purchaser may be considered to be the recipient of the dividend even though he has not received the legal title to the stock itself and does not himself receive the dividend. For example, if the seller retains the legal title to the stock as trustee solely for the purpose of securing the payment of the purchase price, with the understanding that he is to apply the dividends received from time to time in reduction of the purchase price, the dividends are considered to be income to the purchaser.

109 For the purposes of the act, amounts received as stock dividends do not constitute a dividend. Such amounts will only reduce the pro rata cost of the number of shares held before the receipt of the stock dividend provided, however, that the dividends are of a like class of stock as the stock on which the dividends are declared. As an example, common stock dividends on common stock, or preferred stock dividends on preferred stock, are exempt under the provisions of this regulation; but, a preferred stock dividend on common stock ownership or a common stock dividend on preferred stock ownership, is without the meaning of the regulation and, therefore, subject to taxation. If a shareholder has the option, and does elect, to take a stock dividend in lieu of a dividend paid in cash or other property, then said dividend shall be included in gross income in an amount equal to its fair market value. A stock dividend issued in compliance with a federal court order does not constitute income or the purpose of this regulation, instead the cost of the original stock should be prorated to also include the stock received.

110 Dividends paid in securities or other property (other than its own stock) in which the earnings of a corporation have been invested are income to the recipients to the amount of

the fair market value of such property when distributed by the corporation to the shareholder. Scrip dividends are subject to tax in the year in which the warrants are issued.

111 If a corporation cancels or redeems its stock at such a time and in such manner as to make the distribution in whole or in part essentially equivalent to a taxable dividend, the amount so distributed, to the extent it represents a distribution of earnings and profits, shall be treated as a taxable dividend.

112 The Commissioner will follow Federal Rules, Regulations and Revenue Procedures relating to dividends to the extent that such procedures are not deemed contrary to the context and intent of Mississippi Law.

113 (Reserved)

114 (Reserved)

Chapter 07 Income from Retirement Allowances, Pensions, Annuities or Optional Retirement Allowances

100 Amounts received as retirement allowances, pensions, annuities or optional retirement allowances from any Federal, State, and Private retirement system or plan are exempt from State Income Tax.

101 Optional retirement allowances include all income from Keogh Plans, Individual Retirement Accounts (IRA'S), and other similar tax deferred plans.

102 Optional retirement allowances also include income from deferred compensation plans to the extent these plans are tax deferred under federal income tax law and the recipient is qualified to receive other retirement income based on minimum age, years of service, or other criteria at the time of receipt of the deferred compensation.

103 Amounts received as a distribution under a Roth Individual Retirement Account shall be treated in the same manner as provided under the Internal Revenue Code of 1986, as amended.

104 Early distributions from retirement plans do not qualify for this exemption. Although these amounts are subject to state income tax, there is no early withdrawal penalty for state purposes. In addition, the terms "retirement allowances, pensions, annuities or optional retirement allowances" do not include income from investments in stocks, bonds, intangible securities, real properties, or tangible properties.

105 The above exemption from income tax extends to the spouse or other beneficiary upon the death of the primary retiree.

106 (Reserved)

107 (Reserved)

Chapter 08 Income of a Minor Child or Dependent

100 Compensation for personal services of a child shall, regardless of the provisions of state law relating to whom is entitled to the earnings of the child, and regardless of whether the income is in fact received by the child, be deemed to be the gross income of the child and not the gross income of the parent of the child. Such compensation, therefore, shall be included in the gross income of the child and shall be reflected in the return rendered by or for such child. The income of a minor child is not required to be included in the gross income of the parent for income tax purposes.

101 In the determination of taxable income or net income, all expenditures made by the parent or the child attributable to amounts which are includible in the gross income of the child and not of the parent are deemed to have been paid or incurred by the child. In such determinations, the child is entitled to take deductions not only for expenditures made on his behalf by his parent which would be commonly considered as business expense, but also for other expenditures such as charitable contributions made by the parent in the name of the child and out of the child's earnings.

102 The term **"parent"** includes maternal parent, adoptive parent, guardian or any other person who is legally charged with the care of the minor.

103 A tax return shall be made by the person charged with the care of a minor or his property, unless the minor himself makes or causes to be made his tax return.

104 The Commissioner will follow Federal Rules, Regulations and Revenue Procedures issued under Section 73, IRC, and such other Federal Rules and Regulations relating to income of a minor child or dependent as are deemed not contrary to the context and intent of Mississippi Law.

105 (Reserved)

106 (Reserved)

Chapter 09 Prizes, Awards and Stipends

100 Amounts received as prizes and awards are generally includible in gross income. Prizes and awards which are includible in gross income include, but are not limited to amounts received from radio and television giveaway shows, door prizes, awards in contests of all types, as well as any prizes and awards from an employer to an employee in recognition of some achievement in connection of his employment.

101 For prizes or awards other than money, the fair market value of the goods or services is the amount to be included in gross income.

102 Stipends which are compensation for services (past, present or future) are includible in gross income.

103 The Commissioner will follow Federal Rules, Regulations and Revenue Procedures regarding prizes, awards and stipends as are deemed not contrary to the context and intent of the Mississippi Law.

104 See Title 35, Part III, Subpart 03, Chapter 06 of the Mississippi Administrative Code for exclusion provisions relating to prizes and awards and to scholarships and fellowship grants.

105 (Reserved)

106 (Reserved)

Chapter 10 Reserved

35.III.2.10 revised effective June 15, 2019

Chapter 11 State and Local Income Taxes Paid

100 The amount allowable for individual non-business itemized deductions for federal income tax purposes is the same for state income tax purposes with the following exceptions:

1. State income tax paid - this includes local income taxes and any tax allowed for federal purposes in lieu of state income tax,
2. Gambling losses from Mississippi gaming establishments, and
3. Taxes collected by licensed Mississippi gaming establishments pursuant to Section 27-7-901.

101 These items are not allowable deductions for state purposes in any form. If these items are deducted on federal form Schedule A, an adjustment must be made for state purposes. Local income taxes are to be treated the same as state income taxes.

102 (Reserved)

103 (Reserved)

Chapter 12 Amounts Received Under Accident and Health Plans

100 The Commissioner will follow Federal Rules, Regulations and Revenue Procedures to the extent that such procedures are not deemed contrary to the context and intent of Mississippi Law.

101 (Reserved)

102 (Reserved)

Chapter 13 Compensation for Injuries and Sicknesses

100 The Commissioner will follow Federal Rules, Regulations and Revenue Procedures to the extent that such procedures are not deemed contrary to the context and intent of Mississippi Law.

101 (Reserved)

102 (Reserved)

Chapter 14 Strike Benefits

100 Amounts paid by an organized union as unemployment benefits to its unemployed members are taxable if the benefits come out of union dues. If union members make special payments to a fund, unemployment benefits received from the fund are includible in gross income only to the extent they exceed the recipient's contributions. The amounts paid into the fund are not deductible.

101 (Reserved)

102 (Reserved)

Chapter 15 Return of Life Insurance, Annuity or Endowment Policies

100 The Commissioner will follow Federal Rules, Regulations and Revenue Procedures as are deemed not contrary to the context and intent of Mississippi Law.

101 (Reserved)
102 (Reserved)

Chapter 16 Unemployment Compensation Benefits

100 Unless otherwise instructed in writing, the Commissioner will follow Federal Rules, Regulations and Revenue Procedures relating to the taxability of unemployment benefits as are deemed not to be contrary to the context and/or intent of Mississippi Law.

101 (Reserved)

102 (Reserved)

Chapter 17 Rental Value of Parsonages

100 A rental allowance must be included in the minister's gross income in the in which it is received, to the extent that such allowance is not used by him during such taxable year for rent of a home, for purchase of a home and for expenses directly related to providing a

home. Where the minister rents, purchases or owns a farm or other business property in addition to a home, the portion of the rental allowance expended in connection with the farm or business property shall not be excluded from his gross income.

101 Gross income does not include the rental value of a home, including utilities, furnished to him as a part of his compensation, or the rental allowance paid to him as part of his compensation to the extent such allowance is used by him to rent or provide a home. In order to qualify for the exclusion, the home or rental allowance must be provided as compensation for services which are ordinarily the duties of a minister of the gospel.

102 (Reserved)

103 (Reserved)

Chapter 18 Recovery of Tax Benefit Items

100 The Commissioner will follow Federal Rules, Regulations and Revenue Procedures relating to recovery of tax benefit items as are deemed not contrary to the context and intent of Mississippi Law.

101 (Reserved)

102 (Reserved)

Chapter 19 Gross Income of Farmers

100 The Commissioner will follow Federal Rules, Regulations and Revenue Procedures to the extent that such procedures are not deemed contrary to the context and intent of Mississippi Law.

101 (Reserved)

102 (Reserved)

Subpart 03 Exclusions from Gross Income

Chapter 01 (Reserved)

Chapter 02 Exclusion for Improvements Erected by Lessee

100 The value of improvements to real property, attributable to buildings erected or other improvements made by the lessee upon the leased property is excluded from gross income of the lessor. However, where the facts disclose that such buildings or improvements represent, in whole or in part, a substitution for rent payments for the lease period, the exclusion does not apply.

101 (Reserved)

102 (Reserved)

Chapter 03 Employee Benefits

100 A taxpayer may exclude from gross income compensation which is received by an employee under a worker's compensation act, for personal injuries or sickness incurred in the course of employment. The exclusion also applies to compensation which is paid under a worker's compensation act to the survivor or survivors of a deceased employee. However, the exclusion does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement occurs from an occupational injury or sickness. Amounts received as compensation for a non-occupational injury or sickness, and also, amounts received as compensation for an occupational injury or sickness in excess of the amount provided in the applicable worker's compensation act are also not subject to the exclusion.

101 A taxpayer may exclude from gross income the amount of any damages received under a suit or settlement of a claim on account of personal injuries or sickness.

102 A taxpayer may exclude from gross income the amounts received through accident or health insurance for personal injuries or sickness to the extent that such amounts are not attributable to contributions of the employer which are not includible in the gross income of the employee, or are not paid by the employer. Therefore, if an employee received compensation for personal injuries or sickness from an accident or health insurance policy which the worker purchased or from a fund maintained exclusively by employee contributions, the amounts received are excluded from gross income.

103 Amounts received by employees under employer--financed accident and health plans may be excluded from gross income if such amounts are paid to reimburse the taxpayer for expenses incurred for medical care of the taxpayer, spouse and dependents or to reimburse the employee for medical care and payments for permanent injury or loss of bodily function.

104 The gross income of an employee does not include contributions which his employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by him, his spouse or his dependents.

105 Gross income of an employee, his spouse or his dependents, does not include amounts contributed by an employer on behalf of an employee, his spouse or his dependents under a qualified group legal services plan; or the value of legal services provided, or amounts paid for legal services, under a qualified group legal services plan to, or with respect to, an employee, his spouse or his dependents. This benefit is found in Section 120 of the Internal Revenue Code.

106 Nontaxable benefits under Section 125 of the Internal Revenue Code referred to as "Cafeteria Plans" are also excludable for Mississippi Income Tax purposes to the extent allowed by the IRC. Mississippi also recognizes Section 129 of the Internal Revenue Code pertaining to Dependent Care Assistance Plans and Section 127 of the Internal Revenue Code pertaining to Employer Provided Educational Assistance Plans. The benefits mentioned above under IRC Sections 120, 125, 127 and 129 are not subject to Mississippi Withholding.

107 The value of any meals or lodging furnished to an employee, his spouse or any of his dependents by or on behalf of his employer for the convenience of the employer may be excluded from gross income of an employee but only if in the case of meals, the meals are furnished on the business premises of the employer, or in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

108 The rental value of a dwelling furnished to a minister of the gospel is exempt from tax as is a rental allowance to the extent that the allowance is used to rent or provide a home. This includes the portion of a retired minister's pension designated as a rental allowance by the national governing body of a religious denomination having complete control over the retirement fund. The exemption also applies to the rental value of a residence furnished to a retired minister (but not the minister's spouse).

109 (Reserved)

110 (Reserved)

Chapter 04 (Reserved)

Chapter 05 Proceeds of Life Insurance

100 Mississippi law excludes from the definition of "Gross Income" the proceeds of life insurance policies and contracts paid upon the death of the insured. Mississippi does not limit the exclusion on any death benefit paid by or for the employer of the deceased employee.

101 All interest income on life insurance proceeds should be included in gross income.

102 The Commissioner will follow Federal Rules, Regulations and Revenue Procedures as are deemed not contrary to the context and intent of Mississippi Law.

103 (Reserved)

104 (Reserved)

Chapter 06 Gifts, Bequests, Devises, Prizes, Awards, Scholarships and Fellowship Grants

100 Mississippi will follow Federal rules and regulations not in conflict with Mississippi law.

101 (Reserved)

102 (Reserved)

Chapter 07 Contributions by Employer to Accident and Health Plans

100 The gross income of an employee does not include contributions which his employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sicknesses incurred by him, his spouse or his dependents. The employer may contribute to an accident or health plan either by paying the premium (or a portion of the premium) on a policy of accident or health insurance covering one or more of his employees, or by contributing to a separate trust or fund. However, if such insurance policy, trust or fund provides other benefits in addition to accident and health benefits, the exclusion applies only to that portion of the employer's contribution which is allocable to accident and health benefits.

101 (Reserved)

102 (Reserved)

Chapter 08 Exclusion Military Pensions and Disability Payments for Certain Injuries and Sicknesses

100 The Commissioner will follow Federal Rules, Regulations and Revenue Procedures relating to the classification and tax treatment of amounts permitted as an exclusion under this regulation to the extent that such procedures are deemed not contrary to the context and intent of Mississippi Law.

101 (Reserved)

102 (Reserved)

Chapter 09 Gaming Winnings and Gaming Income

100 Amounts received in cash or other remuneration from play at a gambling game or as a prize, award, or tournament winning are subject to an income tax levy. However, the reporting requirements and tax levy will vary depending on the source of the income.

1. TERMS:
   a. The term "Mississippi gaming establishment" or "gaming establishment" includes any establishment where gambling games are conducted or operated within this state and any party that provides or is responsible for the payment of cash or other remuneration resulting directly or indirectly from play at gambling games within this state.

b. The term “Mississippi gaming winnings” or "gaming winnings" includes all amounts that are paid, whether in cash or other form, by Mississippi gaming establishments to patrons which are subject to the withholding and/or reporting requirements of the Internal Revenue Code (IRC) as specified in sections 27-7-901 and 27-7-903. Such amounts are not limited to cash or remuneration from play at a gambling game, but include, without limitation, amounts considered prizes, awards, tournament winnings, or similar types of compensation.

c. The term "paid" means the gross amount of gaming winnings without respect to any reduction for tax withholdings or other reserves and may not be less than the amount reported for federal tax purposes.

2. MISSISSIPPI GAMING WINNINGS

a. A tax levy of 3% is made on all Mississippi gaming winnings. Such amount is required to be withheld by the Mississippi gaming establishment. The amount of tax withheld from gaming winnings will be reflected on Federal Form W-2G or other information return filed by the gaming establishment to report the transaction. The amount to be withheld is 3% of the amount paid, whether in cash or other form, to the recipient.

b. Multi-period payoffs: If a patron is entitled to receive either a lump-sum payment or a series of periodic payments received at least annually, then a tax of 3% is levied on the lump-sum amount in the year it is constructively received. The 3% levy is a liability of the Mississippi gaming establishment which was a party to the wager, regardless of whether it is the paying agent.

c. The three percent (3%) withheld on Mississippi gaming winnings reflects the tax due and once such proper amounts are remitted to the State Tax Commission by the Mississippi gaming establishment, as well as a properly completed W-2G, 1099, or other federally prescribed informational statement (filed annually or as prescribed by the commissioner), the patron has no further filing requirements. If the federally prescribed information return does not allow for the recording of both state income and state tax withholdings, then a W-2G should be completed and attached as part of the filing of such statement.

d. The W-2G or 1099 reflecting the income and Mississippi withholding once remitted by the Mississippi gaming establishment to the Tax Commission serves as the patrons return filing for such income. Accordingly, Mississippi gaming winnings are not reported on the patron's regular income tax return filing. Likewise, the amounts withheld can not be claimed on an income tax return filing to offset a tax liability, create a refund, or to generate any other type of credit or offset.

3. OTHER MISSISSIPPI GAMING INCOME

a. Except for the amounts described in paragraph II, all other gaming income is subject to the income tax levy provided for in section 27-7-3. Any gaming losses incurred at Mississippi gaming establishments are a reduction, as compared to an itemized deduction, to Mississippi gaming income. The net of such amounts, if positive, is reportable by the patron as taxable Mississippi income. Mississippi gaming income includes any gaming

income not covered by the 3% levy described in paragraph II received from a Mississippi gaming establishment. Mississippi gaming losses may not be taken as a separate deduction or otherwise offset any income other than Mississippi gaming income not subject to the 3% withholding requirement and resulting from a wager.

4. Non-Mississippi Gaming Income

a. Mississippi follows federal rules, regulations, and revenue procedures to the extent not contrary to the laws of this state in determining the amount of gaming income received and gaming losses incurred by Mississippi residents at non-Mississippi gaming establishments. Non-Mississippi gaming income is reported apart from any non-Mississippi gaming losses incurred. Non-Mississippi gaming losses are allowed as an itemized deduction to the extent of any non-Mississippi gaming income. In no event may the deduction for such losses exceed the non-Mississippi gaming income.

101 (Reserved)

102 (Reserved)

Subpart 04 Adjustments to Gross Income

Chapter 01 Adjustments to Gross Income

100 Payments to an IRA, SEP, Keogh Retirement Plan (Retirement Plans)

A deduction is allowed for contributions to various retirement plans to the extent that such payments are deductible for federal income tax purposes. For details, see Regulation 402.

101 Interest Penalty on Early Withdrawal of Savings

Amounts forfeited to a financial institution, such as a penalty for premature withdrawal of funds form a time savings account, certificate of deposit, or similar class of deposit, are allowed as a deduction from gross income. The 1099 form furnished by the financial institution will show the amount of any interest penalty charge for early withdrawal. This amount is deductible form gross income.

102 Alimony and Separate Maintenance Payments

1. A deduction from gross income in determining adjusted gross income is allowable with respect to payments in the nature of, or in lieu of alimony or an allowance for spousal, not child, actually paid by the taxpayer during the taxable year. This same amount must be included in the income of the spouse receiving the payment.
2. Unless otherwise instructed in writing, the Commissioner will follow the Federal Rules, Regulations and Revenue Procedures relating to alimony and separate maintenance payments as are deemed not to be contrary to the context and/or intent of Mississippi Law.

103 Moving Expenses

Moving expenses are deductible as an adjustment to gross income as allowed for federal income tax purposes. Attach a copy of the federal form to the Mississippi return. Unless otherwise instructed in writing, the Commissioner will follow Federal Rules, Regulations and Revenue Procedures relating to the deduction of un-reimbursed allowable moving expenses as are deemed not to be contrary to the context and/or intent of Mississippi Law.

104 National Guard or Reserve Pay

A taxpayer is allowed a deduction to gross income for compensation received as a member of the National Guard or Reserve Forces of the United State not to exceed the sum of Five Thousand Dollars ($5,000.00) for any taxable year. Only compensation received as payment for inactive duty training (monthly or special drills or meetings), active duty training (summer camps, special schools, cruises) and state active duty (emergency duty) qualifies for this deduction to gross income. Full-time National Guard pay is not allowed as a deduction. Report this income as regular wages or salaries.

105 MPACT or MACS Program Payments

1. Taxpayers who make payments to a prepaid tuition contract or a college savings account under the MPACT (Mississippi Prepaid Affordable College Tuition) or the MACS (Mississippi Affordable College Savings) programs are allowed a deduction for the actual amounts paid during the taxable year as an adjustment to gross income. Each program shall provide to the taxpayer an annual statement of account to identify the amount paid and therefore, eligible for the adjustment.
2. Unqualified distributions of previously deducted MPACT or MACS payments must be included in gross income in the year they are received. Payments to other prepaid tuition programs are not eligible for this deduction.

106 Self-Employed Health Insurance Deduction

Amounts paid by a self-employed individual for insurance which constitute medical care for the taxpayer, his spouse and dependents, are deductible as an adjustment to gross income. Unless otherwise instructed in writing, the Commissioner will follow Federal Rules, Regulations and Revenue Procedures relating to the deduction of self-employed health insurance as are deemed not to be contrary to the context and/or intent of Mississippi Law.

107 (Reserved)

108 (Reserved)

Chapter 02 Adjustments to Gross Income—Retirement Plans

100 An adjustment to gross income for contributions to a tax-sheltered annuity may be claimed for Mississippi income tax purposes only to the extent permitted for Federal Income Tax purposes. The Commissioner will, therefore, follow the Federal Rules, Regulations and Revenue Procedure issued under Section 403(b), IRC, and such other Federal Rules and Regulations relating to contributions to tax-sheltered annuities as are deemed not contrary to the context and intent of Mississippi Law.

101 Qualified Deferred Compensation Plans. Members of the Mississippi Public Employees Retirement System may exclude from wages and salaries (gross income) for Mississippi income tax purposes amounts contributed by the employee to the Mississippi Public Employees Deferred Compensation Plan, a deferred compensation program authorized by Mississippi Code Section 25-14-11 et seq.

101.01 Beginning July 1, 1982, amounts withheld from the wages and salaries of members of the Mississippi Public Employees Retirement System as required contributions to the retirement fund are excludable from gross income.

101.02 The Commissioner will follow those rules and regulations issued by the Internal Revenue Service relating to an exclusion for contributions to an authorized and qualified deferred compensation plan as are deemed not contrary to the context and intent of Mississippi Law.

102 Self-Employed Retirement Plan. A deduction from gross income in determining adjusted gross income is allowable for amounts contributed by a self-employed individual to a qualified retirement plan which meets the qualifications and restrictions of a plan established under Sections 401-405, IRC, and only to the extent that such contributions are deductible for Federal income tax purposes.

103 Retirement Savings-IRA's. A deduction from gross income in determining adjusted gross income is allowable for amounts paid during the taxable year of an individual by or on behalf of such individual for his benefit to an individual retirement account described in Section 408(b), IRC, or for a retirement bond described in Section 409, IRC, to the extent that such amounts are deductible for Federal income tax purposes under Section 219, IRC. Also, a deduction is allowable for amounts paid in cash for a taxable year by or on behalf of such individual for the benefit of himself and his spouse.

103.01 Any part of a lump-sum distribution from a qualified retirement plan which is rolled over into an individual retirement account described in Section 408(a), IRC, and an individual retirement annuity described in Section 409, IRC, may be deducted from gross income for Mississippi income tax purposes only to the extent that such roll over amounts are permitted as a deduction or exclusion for Federal income tax purposes.

104 Amounts withheld from wages as required contributions to the Federal Insurance Contributions Act are not deductible or excludable from gross income.

105 (Reserved)

106 (Reserved)

Subpart 05 Business Deductions General

Chapter 01 Business Deductions

100 The taxable income on which the income tax is based is the gross income of the taxpayer, less certain specific deductions allowed by law plus, in the case of individuals, trusts and estates, certain specific amounts for personal and additional exemptions. The allowance for deductions fall into three basic classes; namely,

1. Ordinary and necessary expenditures connected with a trade or business.
2. Adjustments to gross income.
3. Non-business individual itemized deductions or standard deduction.

101 Business deductions falling within class 1 above are deductible from the gross profit of the trade or business to determine the net profit or loss of the business activity. Deductions falling within class 2 above are deductible from the gross income of the taxpayer to determine net income, commonly referred to as adjusted gross income, and may be claimed by the individual regardless of whether non-business deductions are itemized. Deductions falling within class 3 are generally personal in nature and may be claimed only when itemized. In lieu of itemizing personal non-business deductions, the individual may elect to claim the optional standard deduction.

102 Under no circumstances, may an item of expense be deducted as both a business deduction and a non-business deduction, either in fact or in effect, in the taxable year.

103 Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business. The cost of goods purchased for resale, with proper adjustment for opening and closing inventories, is deducted from gross sales in computing gross income.

104 Among items included in business expenses are management expenses, commissions, labor, supplies, incidental repairs, operating expenses of automobiles used in the trade or business, traveling expenses while away from home solely in the pursuit of a trade or business, advertising and other selling expenses, together with insurance premiums against fire, storm, theft, accident or other similar losses in the case of a business and rental for the use of business property.

105 However, no such item shall be included in business expenses to the extent that it is used by the taxpayer in computing the cost of property included in its inventory or used in determining the gain or loss of its plant, equipment or other property. The full amount of the allowable deduction for ordinary and necessary expenses in carrying on a business is deductible, even though such expenses exceed the gross income derived during the taxable year from such business.

106 The following requirements determine whether a particular item of expense is deductible as a business expense: It must be incurred in a trade or business carried on by the taxpayer. This excludes all personal expenses as well as expenses sustained in earning income, but not arising from a trade or business. Expenses directly related to earning exempt income are not deductible.

107 The "expense" cannot be a capital expenditure.

108 The expenses must be ordinary, necessary and reasonable. To the extent that an expense is unreasonable, it is not necessary and will not be allowed as a deduction.

109 (Reserved)

110 (Reserved)

Chapter 02 Expenditures Attributable to Lobbying, Political Campaigns, Attempts to Influence Legislation, etc., and Certain Advertising

100 A taxpayer may take a business expense deduction for an ordinary and necessary expenditure in regard to certain types of activities relating to promoting or combating legislation. An expense is deductible if it is paid or incurred (1) in direct connection with an appearance before, submission of statements to, or sending communications to, Congressional Committees or legislative bodies of states, U. S. possessions, etc., in regard to legislation of direct interest to the taxpayer, or (2) in direct connection with communication of information between the taxpayer and a trade or business organization of which he is a member concerning legislation of direct interest to both parties.

101 A portion of the dues for membership in an organization engaged in such activities is deductible. The deduction is limited to that portion which is attributable to the expenses incurred by the organization engaged in such activities.

102 However, expenses incurred in an attempt to influence the general public, or segments thereof, are nondeductible. This limitation applies to a corporation's attempt to influence its shareholders.

103 Political contributions are not deductible either as business expenses or as charitable contributions.

104 Deductions otherwise allowable as a business expense shall not be allowed for any amount paid or incurred for admission to any program or event identified with a political candidate or party or if any portion of the proceeds from such program or event inures to or for the use of the party or candidate.

105 Expenditures for institutional or "good will" advertising which keeps the taxpayer's name before the public are deductible business expenses if the expenditures are related to the patronage the taxpayer might reasonably expect in the future.

106 (Reserved)

107 (Reserved)

Chapter 03 Taxes Paid as Business Expense

100 Only the following taxes shall be allowed as a business expense deduction in computing net income for the taxable year within which paid or accrued, according to the method of accounting used in computing taxable income:

1. State and local, and foreign, real property taxes.
2. State and local personal property taxes.
3. Cigar and cigarette taxes, gasoline taxes, and sales and use taxes if included in business gross income, or if incurred as an item of expense in a trade or business or in the production of taxable income.

101 In addition, there shall be allowed as a business expense deduction state and local taxes, not described in the preceding section and not otherwise specifically excluded under the following section of this chapter, which are paid or accrued within the taxable year in carrying on a trade or business.

102 The following taxes shall not be allowed as a business expense deduction in computing net income:

1. Federal and state income taxes.
2. Any taxes based on or measured by net income.
3. Estate and inheritance taxes.
4. Gift taxes.
5. Cigar and cigarette taxes, gasoline taxes, and sales and use taxes if not included in business gross income, or if not incurred as an item of expense in a trade or business.

103 To the extent that a specific tax is deductible under both Federal and State Law, the Commissioner will follow Federal Rules, Regulations and Revenue Procedures relating to the tax treatment of the specific tax.

104 (Reserved)

105 (Reserved)

Chapter 04 Depreciation

100 Reasonable Allowance. Section 27-7-17(1)(f) provides that a reasonable allowance for the exhaustion, wear and tear and obsolescence of property used in the trade or business or property held by the taxpayer for the production of income shall be allowed as a depreciation deduction. The allowance is that amount which should be set aside for the taxable year in accordance with a consistent plan, so that the aggregate of the amounts set aside will equal the cost or other basis of the property. The allowance shall not reflect amounts representing a mere reduction in market value. Mississippi will follow Federal depreciation guidelines as are not deemed contrary to the context and intent of Mississippi Law.

101 The first year thirty-percent (30%) "bonus" depreciation as set forth in the Federal "Job Creation and Worker Assistance Act of 2002", H.R. 3090, does not constitute a reasonable

allowance for the exhaustion, wear, and tear and obsolescence of the property in regard to which it is taken. This thirty-percent (30%) "bonus" depreciation is therefore not an allowable deduction for depreciation under Section 27-7-17(1)(f). Mississippi will not follow the Federal guidelines in regard to this "bonus" depreciation since such "bonus" depreciation is contrary to the context and intent of Mississippi Law. If such "bonus" depreciation is used for federal income tax reporting purposes, the tax basis of property will be different for Federal and State until such property is fully depreciated.

1. If such “bonus” depreciation is used for federal income tax reporting, each year an adjustment must be made for reporting depreciation to this State so as to reflect an amount of depreciation that would have otherwise been allowed using Federal depreciation guidelines other than that contained in H.R.3090 “Job Creation and Worker Assistance Act of 2002.”
2. If it is determined “bonus” depreciation was taken in any year and the proper State adjustment was not made in that same year, all allowances for depreciation will be denied on all tax returns that are within the statute of limitations until there is a full recovery to this State of excess depreciation deductions. When the Commissioner makes such adjustment, there shall be assessed, in addition to interest, all penalties on any underpayment of income tax to the extent provided by law.

102 Mississippi does not recognize the Federal tax credit allowed for qualified depreciable property acquired and placed in service during the tax year and does not require the taxpayer's basis in the property be reduced by 50% of the investment tax credit. This affects the computation of gain or loss upon disposition of the asset. In order for a taxpayer to maintain the same basis in property for both Federal and state purposes, for property placed in service after 1982, the taxpayer's basis in the property may be reduced by 50% of the investment tax credit as additional depreciation for Mississippi income tax purposes in the year the ITC is taken.

103 A taxpayer may elect to treat the cost of any Internal Revenue Code Section 179 property, which is not chargeable to a capital account as an expense. Cost so treated shall be allowed as a deduction for the taxable year in which the Section 179 property is placed in service. In determining the amount of allowable expense deduction in any taxable year, the Commissioner will follow Federal Rules, Regulations and Revenue Procedures issued under Section 179, Internal Revenue Code as are deemed not contrary to the context and intent of Mississippi Law.

104 (Reserved)

105 (Reserved)

Chapter 05 Depletion

100 Section 27-7-17(1)(g) provides that there shall be allowed as a deduction in computing taxable income in the case of mines, oil and gas wells, other natural deposits and timber, a reasonable allowance for depletion and for depreciation of improvements, <u>BASED UPON</u>

COST, including cost of development, not otherwise deducted, or fair market value as of March 16, 1912, if acquired prior to that date.

101 In the case of standing timber, the depletion allowance shall be computed solely upon the adjusted cost basis of the property. In the case of other exhaustible natural resources, the allowance for depletion shall be computed upon either the adjusted cost basis of the property (cost depletion) or upon a percentage of gross income from the property (percentage depletion), whichever results in the greater allowance for depletion for any taxable year, but in no case shall the aggregate deductions for depletion allowance exceed the cost basis of the property. In no case will depletion based upon discovery value be allowed. Unless cost of mineral deposits can be definitely determined and substantiated, a depletion deduction will not be allowed. Depletion is allowable only in connection with actual production. A depletion deduction is not allowed on lease bonus or lease rental income.

102 For the purpose of this regulation, the regulations of the Internal Revenue Service shall be followed in computing the depletion allowance, except as stated above and in those cases where the Mississippi Law and the Federal Law are in conflict. The percentage depletion allowance authorized by the Federal Law may be used as a method of computing the depletion allowance for Mississippi tax purposes. However, in no instance shall the aggregate deduction for depletion exceed the cost basis of the property. Taxpayers having rights to natural resources located in this state and in other states shall confine their computation and deduction for depletion allowances to only those natural resources which produce income for Mississippi tax purposes.

103 (Reserved)

104 (Reserved)

Chapter 06 Net Operating Loss

100 Taxpayers are allowed to carryover their net operating losses from a trade or business and deduct such loss in the next five succeeding years. The carryover is first to the year immediately following the loss year, then to the second year following the loss year, and so on until the loss is exhausted, not to exceed five years. In instances where more than one year's net operating loss is being carried over, the first year's loss must be carried over first until exhausted before the second year's loss may be carried over, and subsequent years' losses must be carried over in the same manner.

101 Taxpayers entitled to the net operating loss carryover are:

1. Individuals
2. Corporations (Except for regulated investment companies, and life and mutual insurance companies other than marine).
3. Estates and trusts
4. Partners (to the extent of their allocable share of partnership net losses).

102 In order to qualify as an operating loss carryover under the provisions of Section 27-7-17(1)(l) of the Code, the loss to be carried over must have been incurred first; from sources within the boundaries of the State of Mississippi, or from sources within the jurisdictional boundaries of the Income Tax Laws of the State of Mississippi; and secondly, the loss must have been reported as such on an income tax return filed with the State of Mississippi for the year of the loss by the taxpayer claiming the loss carryover.

103 A net operating loss incurred by any taxpayer prior to becoming subject to the jurisdiction of the Mississippi Income Tax Laws will not be allowed as a loss carryover deduction.

104 Taxpayers who under applicable provisions of the statute are allowed or required to exclude income earned from sources outside of Mississippi, and taxpayers who are required to use formulas in determining Mississippi taxable net income shall determine Mississippi net operating losses in the same manner as Mississippi taxable net income is determined.

105 In making a claim for a net operating loss deduction, the taxpayer must file with its income tax return for the year of such deduction, a concise statement setting forth all material and pertinent facts related thereto; including a detailed schedule showing how the deduction was computed. If more than one net operating loss is being carried over, this schedule must be submitted for each loss year individually.

106 The Commissioner will follow Federal Rules, Regulations and Revenue Procedures to the extent they are deemed not contrary to the context and intent of Mississippi Law.

107 (Reserved)
108 (Reserved)

Chapter 07 Wage Tax Credits

100 Mississippi does not recognize federal regulations issued under Section 280 or 44B, IRC regarding tax credits allowed for work incentive programs or the employment of certain new employees. Deduction for wages paid should be computed without regard to the reduction for wage tax credits for Mississippi income tax purposes.

101 (Reserved)

102 (Reserved)

Chapter 08 Other Business Deductions

100 The Commissioner will follow Federal Rules, Regulations and Revenue Procedures relating to the following business deductions to the extent that such procedures are deemed not contrary to the context and intent of Mississippi Law.

1. Activities Not Engaged in for Profit - Hobby Losses
2. Amortizable Bond Premium
3. Amortization of Pollution Control Facilities

4. Bad Debts
5. Bonuses to Employees
6. Bribes and Kickbacks
7. Capital Contributions to Federal National Mortgage Association (F.N.M.A.)
8. Circulation Expenditures
9. Compensation for Personal Services
10. Cost of Materials
11. Decline in Value of Stock
12. Deduction for Discount on Bonds
13. Demolition of Buildings
14. Depreciation or Amortization of Improvements made by Lessee on Lessor's Property
15. Employee Benefits
16. Entertainment Expenses
17. Expenses and Interest Relating to Tax - Exempt Income
18. Excessive Compensation
19. Farmers' Expenditures for Clearing Land
20. Farmers' Expenditures for Fertilizer
21. Farming Expenses & Losses
22. Fines and Penalties
23. Interest Paid
24. Losses from Wash Sales of Stock or Securities
25. Obsolescence of Nondepreciable Property
26. Professional Expenses
27. Rentals
28. Repairs
29. Research and Experimental Expenditures
30. Soil and Water Conservation Expenditures
31. Trademark and Trade Name Expenditures
32. Traveling Expenses
33. Worthless Securities

101 (Reserved)

102 (Reserved)

Chapter 09 Reforestation Tax Credit

100 Owner and Land Eligibility

1. An eligible owner may be a non-resident; however, eligible lands include only land located within the State of Mississippi. If one person as a life tenant holds property with remainder to another person, the life tenant is considered to be the eligible owner of the property that may qualify as eligible land for reforestation tax credit purposes. For purposes of this section, eligible lands shall not include leased property. Accordingly, a lessee cannot qualify as an eligible owner with respect to costs incurred for reforestation practices on leased land.

2. Land on which cost share assistance was received for a particular practice is not eligible for the reforestation tax credit for that practice, unless the eligible owner's adjusted gross income is less than the federal earned income credit level for that taxable year. The STC will determine the federal earned income credit level each year based on information provided by the Internal Revenue Service.

101 Credit Limitations

1. When married taxpayers own eligible land jointly and implement a reforestation plan on that land, they are considered to be one taxpayer for purposes of applying the limitations on the amount of reforestation tax credit earned on that property. Each spouse may also qualify as an eligible owner, in their own right, (each being eligible for the maximum lifetime RTC of $10,000) provided that each spouse individually had qualified expenditures on eligible land which followed a certified reforestation plan. When each spouse qualifies as an eligible owner, and a reforestation tax credit was earned on eligible land owned jointly by the spouses, each spouse will be considered to have earned one-half of the reforestation tax credit with respect to the jointly owned property/properties. When married taxpayers file jointly and each spouse qualifies for the reforestation tax credit, each spouse must file a separate RTC form to claim their respective reforestation tax credit. In computing their respective reforestation tax credit on their individual RTC form, each spouse must use one-half of the total income tax liability reflected on the combined return and one-half of the total amount of all other credits available to be claimed on the joint return.
2. In the case of a pass-through entity (partnership or S Corporation), the maximum qualifying expenditure ($20,000) giving rise to the maximum $10,000 lifetime reforestation tax credit shall be applied at both the pass-through entity level and at the investor (partner or shareholder) level. The maximum $10,000 reforestation tax credit earned by the pass-through entity is allocated to each investor, partner or shareholder based on their ownership interest.
3. Where more than one person has an undivided ownership interest in eligible land, and two or more of the interest holders implement a reforestation plan on that land, for purposes of this section, the project will be considered a joint venture and treated in the same manner as a partnership. Accordingly, the joint venture will be considered the eligible owner and the maximum qualifying expenditure limitation shall be applied at the joint venture level as in other pass-through entity situations.

102 Applications

1. For purposes of computing eligible costs on which the RTC is computed, total expenditures made during the taxable year on all eligible acres must be reduced by the amount of any cost-sharing proceeds received from federal and/or state forestry incentives programs with respect to such eligible acres.
2. Reforestation costs generally must be capitalized and included in the adjusted basis of the qualified timber property. Any reforestation costs incurred and paid during a tax year must be reduced by the amount of any federal and/or state cost-sharing proceeds received, and the adjusted basis of the property decreased accordingly. If the taxpayer claims investment tax credit and reforestation amortization deductions

with respect to qualifying reforestation expenditures for Federal income tax purposes, the basis of the qualified timber property (for State purposes) shall first be reduced by 50% of the federal investment tax credit. In addition, the adjusted basis of the property must be reduced by 100% of the reforestation tax credit earned with respect to that property. With respect to the property on which the Federal investment tax credit and reforestation amortization deductions are claimed, amortization for State purposes may be claimed on the portion of the qualifying state reforestation expenditures (after being reduced by the Federal investment tax credit adjustment and the RTC earned) which exceeds the basis of the Federal qualifying reforestation expenditures (after being reduced by the Federal investment tax credit adjustment and the Federal amortization to be claimed.) Amortization for state purposes is to be computed in the same manner as for Federal purposes.

103 Verification and Certification

1. The RTC is based on eligible expenditures made during each taxable year (as limited in the statute) for seedlings, seed/acorns, seeding, planting by hand or machine, site preparation, and post-planting site preparation on all eligible acres. When an approved reforestation practice, as defined in the statute, is completed in the taxable year, the RTC may be computed and claimed with respect to all of the eligible costs of the completed practice. Verification by a qualified forester that the reforestation practice(s) were completed and that the reforestation prescription or plan was followed is required in order to claim the reforestation tax credit. A determination must be made on a year by year basis to determine if the costs incurred during that year are eligible expenditures for approved reforestation practices for eligible tree species on eligible lands. The fact that expenditures made under a prescription or plan during one year do not qualify (for example: some cost share assistance was received and the taxpayer's adjusted gross income exceeded the federal earned income credit level) does not mean that expenditures made under the same prescription or plan in the subsequent or prior year would not qualify for the credit (for example: some cost share assistance was received in the subsequent year, but, in that year, the taxpayer's adjusted gross income was less than the federal earned income credit level). In the event that RTC is earned with respect to a practice completed during a taxable year, and the overall prescription or plan is, for any reason, not subsequently completed in its entirety, any RTC previously earned must be recaptured in full.
2. When a pass-through entity (generally, a partnership or S Corporation) is the eligible owner and makes expenditures qualifying for the RTC, the credit is passed through to the investors who may utilize the credit to offset all or a portion of their income tax liability. The Schedule K-1 issued by the pass-through entity to the investor should indicate the investor's allocated RTC. Also, a copy of the pass-through entity's RTC form containing the certification of a qualified forester as required by the statute, should be furnished to the investor to substantiate his claim for the credit on his income tax return. A copy of the RTC form provided by the pass-through entity should be attached to the investor's RTC form prepared and filed with the investor's income tax return. Regulation 803 provides that an income tax credit allowed to an S corporation may be passed on to the shareholders but may

only be used to offset and reduce tax on income of the S corporation allocated to the shareholders. Similar restrictions are implied with respect to income tax credits allowed to partnerships and other pass-through entities which are passed on to their investors. Notwithstanding this statement in Regulation 803 and the similar implied restrictions relating to partnerships and other pass-through entities, the reforestation tax credit received from pass-through entities may, subject to the limitations stated in Section 27-7-22.15, be used by investors to offset all or a portion of their income tax liability.

104 Record Keeping

Since the RTC may be carried forward and claimed until such time as 100% of the credit is utilized, the taxpayer must maintain appropriate records to substantiate the amount of the credit earned, by year, up to the maximum lifetime $10,000 credit; copies of the reforestation prescription(s) or plan(s); copies of the RTC forms containing the signature of the forester certifying the completion of the prescription or plan; and copies of all RTC forms filed so that the utilization of the credit against tax liability can be verified. When claiming RTC carried over from an earlier year or years, a copy of the RTC form containing the original certification of a qualified forester for the tax year in which the RTC was earned should be attached to the RTC form filed for the current year. Recordkeeping is extremely important since failure to adequately document the credit may result in the disallowance of the credit claimed.

105 Other

In order to provide statistical information concerning the participation in reforestation activities, a copy of the "Reforestation Tax Credit - Cost Worksheet" (page 2 only of each RTC form filed), must be mailed to the Mississippi Forestry Commission at the address shown on the form.

106 Example 1

During taxable year 1, Taxpayer incurs qualifying reforestation costs in the amount of $15,000. All of the costs incurred qualify for federal investment credit and reforestation amortization and for the Mississippi reforestation tax credit. The taxpayer elects to claim the investment tax credit and to amortize the maximum expenditure ($10,000) for federal tax purposes. Taxpayer also claims a reforestation tax credit of $7,500 ($15,000 X 50%) for Mississippi tax purposes. The taxpayer must make the following basis adjustments and is entitled to reforestation amortization deductions for both federal and state purposes as shown below:

Year	Item	Amortization Federal	Basis State
	Qualifying Reforestation Costs	$15,000	$15,000
	Investment Credit (Federal)	-500	-500
	Reforestation Tax Credit Earned		-7,500
	Remaining Basis	14,500	7,000
	Federal Amortization to be Claimed	9,500	

	Remaining Basis After Federal Amortization	5,000	-5,000
	State Amortization to be Claimed		2,000
1	Amortization: $9,500/84 = 113 x 6 months	679	
	Amortization: $2,000/84 = 24 x 6 months		142
2	Amortization: $9,500/84 = 113 x 12 months	1,357	
	Amortization: $2,000/84 = 24 x 12 months		286
3	Amortization: $9,500/84 = 113 x 12 months	1,357	
	Amortization: $2,000/84 = 24 x 12 months		286
4	Amortization: $9,500/84 = 113 x 12 months	1,357	
	Amortization: $2,000/84 = 24 x 12 months		286
5	Amortization: $9,500/84 = 113 x 12 months	1,357	
	Amortization: $2,000/84 = 24 x 12 months		286
6	Amortization: $9,500/84 = 113 x 12 months	1,357	
	Amortization: $2,000/84 = 24 x 12 months		286
7	Amortization: $9,500/84 = 113 x 12 months	1,357	
	Amortization: $2,000/84 = 24 x 12 months		286
8	Amortization: $9,500/84 = 113 x 6 months	679	
	Amortization: $2,000/84 = 24 x 6 months		142
	Adjusted Basis (After federal amortization period)	$5,000	$5,000

107 <u>Example 2</u>

During year 1, Taxpayer has a reforestation prescription prepared which includes site preparation, planting seedlings by machine, and post-planting site preparation, on a 100 acre plot of land. In the fall of year 1, site preparation work was completed at a cost of $12,500. In the spring of year 2, planting of the seedlings was completed at a cost of $6,400. Later in year 2, post-planting site preparation was performed at a cost of $4,000, completing all of the reforestation practices contained in the prescription. For year 1, Taxpayer has eligible expenditures of $12,500. Upon certification by a qualified forester that site preparation work was completed and that the reforestation prescription was followed, Taxpayer may determine the amount of RTC earned for year 1. For year 2, Taxpayer has eligible expenditures of $10,400. Upon certification by a qualified forester that the prescription practices were completed and that the reforestation prescription was followed, Taxpayer may determine the amount of RTC earned for year 2. A RTC Form must be filed for each year covering the practices completed and each RTC Form must be signed by a qualified forester certifying that the practices were completed in accordance with the prescription or plan. In the event that Taxpayer chooses not to complete the prescription plan in Year 2 and uses the property for other purposes, the RTC earned in year 1 must be recaptured.

108 (Reserved)

109 (Reserved)

Subpart 06 Losses

Chapter 01 Casualty Losses of Individuals

100 A casualty loss is a loss due to some sudden, unexpected or unusual event. Casualty losses include losses caused by fire, storm, shipwreck, hurricane, flood, quarry blast, vandalism, sonic boom, earthquake or earth slide.

101 For the purpose of this regulation, a **"disaster loss"** is a casualty loss that occurs from an event in an area that the President of the United States declares as a disaster area warranting Federal assistance.

102 Mississippi Law differs from Federal Law in the carryback and carryover provisions. Normally, casualty losses must be used in the year of occurrence. An exception to this is a disaster loss as defined above. Disaster losses may be carried back 3 years and carried forward 7 years. Casualty losses that occurred to property used in a trade or business do not qualify as a disaster loss. For treatment of these losses, see the regulation on casualty losses incurred in a trade or business.

103 The amount of a casualty loss shall be computed the same for Mississippi purposes as for Federal purposes. Each separate casualty, theft and disaster loss in excess of $100.00 is deductible to the extent that the total losses after the $100.00 deduction per loss exceeds 10% of adjusted gross income.

104 Disaster losses are computed the same way with certain limitations. In the year of the loss, for the carryback or carryover computations, a taxpayer may not deduct his personal exemptions, a disaster loss carryback or carryover from another year, or a net operating loss deduction from another year. The carryback and carryover amount is limited to the net disaster loss after the computation in the preceding paragraph.

105 A disaster loss occurring after the end of the taxpayer's filing year, but before the due date of the return, may deduct such loss on the aforementioned return. The order of carryback and carryover is as follows:

1. Third preceding taxable year;
2. Second preceding taxable year;
3. First preceding taxable year;
4. First succeeding taxable year;
5. Second succeeding taxable year;
6. Third succeeding taxable year;
7. Fourth succeeding taxable year;
8. Fifth succeeding taxable year;
9. Sixth succeeding taxable year; and
10. Seventh succeeding taxable year.

106 Example. In March, 1986, the taxpayer suffers a casualty loss from the flooding of his personal residence. The casualty sustained is $80,000, computed in accordance with

provisions of the Internal Revenue Code, Rules, Regulations and Revenue Procedures. The taxpayer elects to deduct the loss on his return for the preceding year. The original 1985 return reveals the following data:

		Husband	**Wife**
Net Income (Adjusted Gross Income)		$30,000.00	$15,000.00
Itemized Deductions:			
Medical Expenses	$ 400.00		
Taxes	1,500.00		
Misc. Deductions	100.00		
Interest Expense	3,500.00		
Contributions	2,000.00		
		7,500.00	.00
Balance		22,500.00	15,000.00
Personal Exemption			
Married	9,500.00		
Dependents (2 Children)	3,000.00		
		7,500.00	5,000.00
Taxable Income		15,000.00	10,000.00
Tax Due	$ 950.00	$ 600.00	$ 350.00

Computation of Net Casualty Loss—Form 62-170—Amended Return

Return For 1985			
Taxable Income Before			
Personal Exemption:		$22,500.00	$15,000.00
Casualty Loss	$80,000.00		
Per Casualty Deductible	(100.00)		
10% AGI Limitation	(4,500.00)		
		60,400.00	15,000.00
Net Casualty Loss		$37,900.00	$ .00
Refund Due Taxpayers	$950.00		
Application of Net Casualty Loss.			
1982 Return Gross Income		$25,000.00	$10,000.00
Net Casualty Loss Balance from 1985		(27,900.00)	(10,000.00)
Balance		$ (2,900.00)	$ (.00)
1983 Return—Gross Income		$25,000.00	$10,000.00
Net Casualty Loss Balance from 1982		(2,900.00)	.00
1983 Gross Income after Carryback		$22,100.00	$10,000.00

Note that a net casualty loss carryback or carryover is deducted from gross income (before itemized deductions and personal exemption.)

107 (Reserved)

108 (Reserved)

Chapter 02 Casualty Losses Incurred in a Trade or Business

100 Except as otherwise provided, any loss arising from fire, storm, shipwreck or other casualty is allowable as a deduction for the taxable year in which the loss is sustained.

101 In determining the amount of loss deductible under this regulation, the fair market value of the property immediately before and immediately after the casualty shall generally be ascertained by competent appraisal. This appraisal must recognize the effects of any general market decline affecting undamaged as well as damaged property which may occur simultaneously with the casualty, in order that any deduction under this regulation shall be limited to the actual loss resulting from damage to the property.

102 In the case of property which originally was not used in the trade or business or for income-producing purposes and which is thereafter converted to either of such uses, the fair market value of the property on the date of conversion, if less than the adjusted basis of the property at such time, shall be used, after making proper adjustments in respect of basis, as the basis for determining the amount of loss.

103 The amount of loss to be taken into account for purposes of this regulation shall be the lesser of either:

1. The amount which is equal to the fair market value of the property immediately before the casualty reduced by the fair market value of the property immediately after the casualty; or
2. The amount of the adjusted basis for determining the loss from the sale or other disposition of the property involved.

104 However, if the property used in a trade or business or held for the production of income is totally destroyed by casualty, and if the fair market value of such property immediately before the casualty is less than the adjusted basis of such property, the amount of the adjusted basis of such property shall be treated as the amount of the loss.

105 A casualty loss incurred in a trade or business for profit shall be determined by references to the single, identifiable property damaged or destroyed. Thus, for example, in determining the fair market value of the property before and after the casualty in a case where damage by casualty has occurred to a building and ornamental trees used in a trade or business, the loss is computed separately for the building and separately for the trees. This rule does not apply to non-business property.

106 Casualty losses incurred in a trade or business are not subject to the $100 floor, however, where property is used partially for business and partially for personal purposes, the $100 floor would apply to the portion of the property used for personal purposes. Casualty losses to property connected with a trade or business may be deducted in the taxable year in which the loss occurred. Such business casualty loss may give rise to a "net operating loss" deduction for the taxable year; however, a casualty loss to property used in a trade or business does not give rise to a "net operating loss" deduction as provided for individuals.

107 For rules relating to net operating loss carryovers, see regulation on net operating losses.

108 (Reserved)

109 (Reserved)

Subpart 07 Individuals

Chapter 01 Residents

100 The term **"resident"** includes natural persons domiciled in this state for other than temporary or transitory purposes or natural persons who maintain a legal or actual residence within this state. All other individuals are nonresidents.

101 Domicile is the place where an individual lives and has his permanent home and principal establishment, and to which he has the intention of returning whenever he is absent. Actual residence may or may not necessarily mean domicile, for domicile is the fixed place of abode which in the intention of the taxpayer is permanent rather than transitory. It is the place in which an individual has voluntarily fixed the habitation of himself and his family, not for a special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home. A domicile once established continues until a new domicile is established through the intent and purpose of establishing, and the actual establishment, of a new domicile coupled with the abandonment of the old. Every person has one and only one domicile. What constitutes domicile is a question of fact rather than of law, frequently depending on a variety of circumstances. The Commissioner may require of an individual claiming domicile outside the State of Mississippi a statement of information with respect to the particular case.

102 An individual who maintains a home, apartment or other place of abode in Mississippi, or who exercises the rights of citizenship in Mississippi by meeting the requirements as a voter or who enjoys the benefits of homestead exemption, is a legal resident of the State of Mississippi and remains a resident although temporarily absent from the state for varying intervals of time. A person may, therefore, be living without Mississippi and still be a legal resident of Mississippi for tax purposes. If an individual establishes the status of a legal resident of Mississippi, he retains that status until such time as such individual takes positive action to establish legal residence in some other state or country and relinquishes his rights and privileges of residency in Mississippi.

103 Every natural person who, though not necessarily a legal resident of Mississippi, nevertheless resides within this state on a more or less regular or permanent basis and not on the temporary or transitory basis of a visitor or sojourner, is defined as an actual resident of this state for income tax purposes.

104 If an individual is simply passing through this state on his way to another state or country or is here for a brief rest or vacation or to complete a particular transaction or fulfill a particular engagement, which will require his presence in this state but for a short period of time, he is in this state for temporary or transitory purposes and will not be considered to be a resident or domiciled here by virtue of his presence within the state. If an individual is in

this state to improve his health, and his illness is of such character as to require a relatively long or indefinite period to recuperate or is here for business purposes which will require a long or indefinite period to accomplish or is employed in a position that may last permanently or indefinitely or is retired from business and moves to Mississippi with no definite intention of leaving shortly thereafter or is otherwise physically present in this state for an indefinite period of time, such individual is domiciled in Mississippi, and taxable upon his entire net income, even though such person may retain his legal residence in some other state or country. As to whether an individual is in a temporary or transitory situation will depend to a large extent upon the facts and circumstances of each particular case.

105 An actual or legal resident of Mississippi who accepts temporary employment in another state or country or who may travel extensively abroad or who may accept a temporary teaching assignment in another state or foreign country or who may otherwise leave the state with intentions, at the time of departure, of returning to this state, remains a resident of this state during the period of his absence from the state. An individual, however, who moves to another state or to a foreign country with no intentions, at the time of departure, of returning to Mississippi, and who surrenders all rights and privileges as a resident of this state, ceases to be a resident of the state from the date of his departure.

106 A resident of Mississippi, who is employed in an occupation that has a periodic work schedule and the work location is outside of the State of Mississippi, is required to file a Mississippi resident return. An example of this is an offshore oilfield worker whose work schedule is seven (7) days on and seven (7) days off. If this individual resides in Mississippi during the seven days off period, he is required to file a Mississippi resident return. If the employer is not required to withhold Mississippi income tax, or does not withhold Mississippi income tax, then the employee would be subject to making estimated income tax payments. See the estimated payments regulation for requirements on who must make estimated payments. If the work location is in another state, then the taxpayer may be allowed to take a tax credit for tax paid to the other state, if the taxpayer filed a return with the other state.

107 (Reserved)

108 (Reserved)

Chapter 02 Part-Year Resident

100 A taxpayer, who is not liable for Mississippi income tax for an entire year because of moving into this state or moving from this state, shall include on his return income received from all sources during the time he is a resident of Mississippi, plus income from all sources within Mississippi for the taxable year while a nonresident of Mississippi.

101 Deductions of a personal nature such as authorized individual non-business itemized deductions, the optional standard deduction and the personal and additional exemptions allowed, shall be allowed only in the ratio that reported Mississippi net income bears to the taxpayer's total net income from all sources for the entire year. In the case of married

individuals, the term "taxpayer's total net income" means the total net income of both husband and wife.

102 Moving expense reimbursement is included both in Mississippi and total income if the taxpayer is moving into Mississippi and is included in total income only if moving outside Mississippi.

103 If a taxpayer moves to Mississippi, his payment to an IRA may be deducted from Mississippi income as well as total income (to the extent such payment is deductible for Federal income tax purposes).

104 If a taxpayer moves outside Mississippi, he may deduct an IRA payment from his total income only.

105 (Reserved)

106 (Reserved)

Chapter 03 Nonresidents

100 The term **"nonresident"** includes those natural persons not meeting the requirements of a resident. A nonresident individual shall be allowed the same personal and additional exemptions as are authorized for resident individuals; however, the nonresident individual is entitled only to that proration of the personal and additional exemptions as his adjusted gross income from sources within the State of Mississippi bears to his total or entire adjusted gross income from all sources.

101 A nonresident individual who is married and whose spouse has income from independent sources must declare the joint income of himself and his spouse from sources within and without Mississippi, and claim as a personal exemption that proportion of the authorized and additional exemptions which the total adjusted gross income from Mississippi sources bears to the total adjusted gross income of both spouses from all sources.

102 In the case of married individuals where one (1) spouse is a resident and the other is a nonresident, the personal exemption of the resident individual shall be prorated on the same basis as if both were nonresidents having net income from within and without the State of Mississippi.

103 Nonresidents, foreign corporations, and citizens of foreign countries, shall include as gross income from sources within the state, all income derived from services rendered, business done, or property located within the state.

104 The income of a nonresident who is assigned to a business location in this state or who draws a salary, fee, commission or other income for work performed at or from a Mississippi location and who regularly travels to such location is considered income derived from services rendered in this state and such income shall be allocated to this state.

105 A nonresident of Mississippi may deduct an IRA payment from total income only. In the case of married individuals, if both spouses work and both have an IRA, calculate each spouse's deduction separately.

106 A nonresident individual, who is a member of a partnership owning property or doing business in the State of Mississippi, is taxable on his share of the net income of the partnership, whether distributed or not. If the partnership does business within and without the state, a nonresident partner is taxable on such share of his income, whether distributed or not, as is assignable to Mississippi.

107 Unless a nonresident or foreign taxpayer files with the Commissioner the complete return required of him, then no deductions or exemptions will be allowed to such taxpayer by the Commissioner in computing such taxpayer's taxable income. Supporting schedules are required for any adjustments, deductions, exemptions, or credit.

108 (Reserved)

109 (Reserved)

Chapter 04 Military

100 Section 574 of the Soldiers and Sailors Civil Relief Act provides that military duty pay can be taxed only by the state in which the armed forces member is domiciled or is a legal resident. A Mississippi resident who enters the military service remains a resident of this state during the tenure of military service or until such time as legal and positive action is taken to establish residence in some other state and the personnel records are changed accordingly by executing through his or her command a state of Legal Residence Certificate, Department of Defense Form DD 2058.

101 A member of the Armed Forces who claims Mississippi as his or her state of legal residence/domicile is subject to Mississippi income tax on his or her total gross income, regardless of the source of the income and regardless of where the member is stationed in the line of duty. If the spouse of a resident member is also a legal resident of Mississippi, he or she must also report total income to Mississippi, regardless of where earned. A tax credit is allowed for income taxes paid to another state on nonmilitary income earned in another state. Mississippi resident individual income tax return, Form 62-100 must be filed by a resident member on or before April 15, following the close of the calendar year.

102 A nonresident member of the Armed Forces stationed in Mississippi who realizes income from nonmilitary sources within the state or whose resident or nonresident spouse realizes income within the state is subject to the requirements of filing a Mississippi nonresident individual income tax return, Form 62-200. A Mississippi nonresident income tax return is also required in the case of a resident member of the Armed Forces whose spouse is a nonresident of Mississippi. In the above cases concerning nonresidents, only the nonmilitary income earned in Mississippi and the total income earned by a Mississippi resident would be reported as Mississippi income; however, the total income of both

taxpayers must be reflected on the nonresident form in order to properly prorate the allowable exemptions and deductions.

103 The pay of military personnel employed by Non-appropriated Fund Instrumentalities such as post exchanges, military stores, officers' clubs and other such instrumentalities was declared by the Department of Defense to be off-duty or nonmilitary pay taxable and reportable in the same manner as for civilian employees of NAFI's. Military pay of members of the Armed Forces who claim Mississippi as their state of legal residence/domicile and the pay of members from NAFI sources in Mississippi are subject to the requirements of Mississippi income tax withholding.

104 Members of the United States Armed Forces generally include in income the same items as civilians. The following list of taxable and nontaxable items of income and deductible items of expense is intended to serve as a guide in answering questions frequently encountered by the taxpayer and is not to be considered as all inclusive.

1. Taxable Items:

   Compensation for service in the Armed Forces:

   a. Mileage allowance (less expenses for self)
   b. Bonus paid for re-enlistment
   c. Service pay
   d. Voluntary allotments
   e. Interest on G. I. life insurance dividends left on deposit with the Veterans Administration
   f. Payments received from a former employer
   g. Retirement pay

2. Not Taxable:

   a. Benefit payments received under federal laws relating to veterans.
   b. Benefit payments received under the G. I. Bill.
   c. Cash received in lieu of subsistence and quarters.
   d. Combat pay -- Enlisted members of the Armed Forces may exclude from gross income all pay received for any month during which they served in a combat zone, and officers may exclude up to $500 per month.
   e. Commutation of quarters.
   f. Compensation earned while a prisoner of war, missing in action or detained status.
   g. Disability pay—Disability pay is excluded unless it is in effect early retirement caused by a disability and is based on the employee's age or length of service. This applies even if the employee's retirement is caused by an occupational injury or sickness.
   h. Family allowances to spouses or dependents.
   i. Reimbursement by the government for moving family and household effects on a change of official station for permanent duty.
   j. Subsistence.
   k. Allowances for uniforms.
   l. Widows' pensions received from the Veterans Administration.

3. Deductible Items:

a. Cap and corp devices, campaign bars aiguilletes, epaulets and chin straps.
b. Local transportation expenses of reservists (limited) unreimbursed travel and transportation expenditures in the course of employment.

4. Not Deductible:
   a. Damage to household furnishings in moving
   b. Dues to officers' club
   c. Expenses of visiting home
   d. Living expenses of a naval officer stationed in one locality.
   e. Lodging and meals on permanent overseas assignment or while permanently assigned to a ship.
   f. Naval officers' subsistence expenses in excess of the allowance while on permanent duty afloat.
   g. Uniform expenses where the uniform takes the place of ordinary clothing.

105 **Exclusions from Gross Income**

1. Retirement Income—Armed Forces:
   a. Retirement allowances received by a retired member of the Armed Forces, including the National Guard and Military Reserve, not based on disability, must be included in gross income to the extent of income from retirement pay, annuities and pensions that exceeds the sum of six thousand dollars ($6,000) for the taxable year. Income from retirement allowances, pensions and annuities up to $6,000 for each taxable year may be excluded from gross income.
   b. The amount of reduction in retirement pay of a retired member of the Armed Forces representing contributions to a Retired Serviceman's Family Protection Plan (10 U.S.C. 1431) or a Survivor Benefit Plan (10 U.S.C. 1447) must be included in gross income for the taxable year in which the contribution or reduction is made for Mississippi income tax purposes. The total retirement allowances, annuities or pensions are subject to the $6,000 exclusion. Mississippi Law does not conform with Section 122, IRC, with respect to the exclusion from gross income of the amount by which the retirement or retainer pay of a member or former member of the uniformed services is reduced in order to provide a survivor benefit.
   c. Upon the death of a member or former member of the uniformed services, where the "consideration for the contract" (cost basis of the annuity) has not been excluded in whole or in part from gross income for Mississippi income tax purposes, the survivor of such member who is receiving an annuity shall exclude from gross income such annuity payments equaling "consideration for the contract" (cost basis of the annuity) not previously excluded from gross income by the member or former member of the uniformed services. The $6,000 retirement income exclusion is also available to the spouse or other beneficiary at the death of the primary retiree.

2. National Guard and Reserve Pay:
   Compensation received by a member of the National Guard or Reserve Forces of the United States for inactive duty training (monthly or special drills or meetings), active duty training (summer camps, special schools, cruises) and for state active

duty (emergency duty) must be included in gross income to the extent such pay is in excess of six thousand dollars ($6,000) for the taxable year. National Guard and Reserve pay up to $6,000 for each taxable year may be excluded from gross income. The exclusion does not apply to compensation or wages of full-time uniformed employees of the National Guard or Reserve Forces, nor does the exclusion apply to the wages of other employees such as secretaries, clerks, technicians, laborers, equipment operators or staff personnel.

106 (Reserved)

107 (Reserved)

Subpart 08 Corporations

Chapter 01 Liquidations and Distributions

100 Effects on Corporation:

1. Distributions of the property of a corporation, including partial and complete liquidations, shall be recognized by the distributing corporation and the gain or loss shall be computed on the difference of the fair market value of the assets distributed and their basis. The above would be applicable to a subsidiary liquidating into a parent unless the parent assumes the same basis that was on the books of the subsidiary. If the parent assumes a basis different from that on its subsidiary's books, then the gain would be recognized on the excess amount placed on the parent's books over the amount recorded on the subsidiary's books. A corporation shall also recognize any gain on the sale of its assets in a partial or complete liquidation, the gain recognized being the difference in the cash and fair market value of property received less the basis of the property given up.
2. A gain or loss will be recognized in the year of the sale of the assets, or if a distribution of assets, in the year of the distribution. A corporation that distributes property over two taxable years must report the gain or loss in each year the distribution is made. The distributing corporation may not elect an installment basis for reporting the sale of its assets.
3. A tax credit is allowed to the shareholders for the tax paid by the corporation on the distribution. This credit to each shareholder is determined by the ratio of the percentage of shares owned by the shareholder to the total number of shares relinquished for the property, applied against the tax paid on the distribution gain by the distributing corporation.
4. The corporation shall provide the State Tax Commission a list of all shareholders with their percentage of ownership, distribution, tax credit allowed, and identification number on Form 62-465. The corporation shall also provide to the shareholder their percentage of ownership, distribution, tax credit allowed, and identification number.

101 Effect on Shareholders:

1. Shareholders shall report any distribution by the corporation to them at its fair market value. The basis of any stock surrendered shall be applied against and reduce any gain on the property received. Gain shall be reported by the shareholder on the difference between the basis of the shareholder and the fair market value of the property received.
2. A credit for the tax paid by the distributing or liquidating corporation from the gain of the sale or gain on the distribution of property will be apportioned to each shareholder. The shareholder should attach Form 62-465, that has been furnished by the corporation, to his income tax return to be allowed credit for the tax paid by the corporation. A shareholder who receives an installment note in return for the surrender of a portion or all of his stock may report his gain on the installment method; however, the credit for tax paid by the distributing corporation is only allowed in the year the property is distributed to the shareholder. The credit is applied against, but limited to, the tax liability from this gain reported by the shareholder and none of the credit may be refunded. A loss must be reported in the year of distribution to the shareholder.
3. Distributions received by one corporation in complete liquidation of another corporation are treated as full payment in exchange for stock in the other corporation. Gain realized to the shareholder corporation from the distribution is recognized and shall be treated as ordinary income. A loss sustained is deductible in full in the tax year of the distribution.

102 State 338 Election:

1. Seller elects 338 [338h(10)].
   a. Corporations that elect a Section 338 sale of assets for Federal tax purposes must also make a similar election for Mississippi tax purposes. The treatment of the election will be different for Mississippi in that the subsidiary corporation must report any gain as if it distributed assets in liquidation to the parent and the parent will report gain on the disposition of its stock as if the subsidiary is liquidated. The subsidiary will increase the bases of its assets by gain reported.
   b. Tax paid by the subsidiary on the gain from the increase in basis can be used by the parent as a tax credit to offset tax due on gain from the disposal of the subsidiary's stock. The parent cannot use the tax credit for tax paid on the increase in basis by the subsidiary to offset tax due from any other activity. Additionally, the tax credit cannot be carried forward or refunded.
2. Purchaser elects 338.

   A Corporation that elects a Section 338 Purchase of assets for Federal Tax purposes in which the corporation purchases at least 80% of the stock of another corporation and treats this purchase as a purchase of assets must make a similar election for Mississippi tax purposes. The subsidiary which has been purchased shall report any gain on the increase in the basis of its assets.

103 Stock Sale Treated as Asset Sale:

Section 27-7-9(j)4 requires a corporation or other entity involved in restructuring, reorganizing, distributing assets or profits or changing ownership that results in

adjustments to its asset basis to report any gain in that year on any such transaction when the transaction involves assets owned or used in this state. A corporation that transfers Mississippi assets to a subsidiary corporation in exchange for stock of such subsidiary and within two years of such transfer sells stock shall recognize such sale of stock of such subsidiary as a sale of Mississippi assets. If the sale of such stock occurs after such two year period but results in avoidance of Mississippi tax then the sale will be treated as a sale of Mississippi assets. Otherwise, a sale of stock will be subject to other provisions of the Mississippi law.

104 Liquidation of a Subsidiary Into a Parent:

1. Section 27-7-9(j)1 provides that no gain shall be recognized if a subsidiary liquidates into a parent and the parent carries the assets at the same bases as were carried on the books of the subsidiary. The non-recognition of gain in this section refers to any gain on distribution by the subsidiary. Therefore, there would be no gain by the subsidiary.
2. Section 27-7-9(l) requires shareholders to recognize gain on the redemption of stock including partial and complete liquidations, subject to subsection j(1). The parent is required to record the assets of a subsection j(1) liquidation at the same basis that the subsidiary had prior to liquidation. Subsection j(1) would defer any gain on the difference between the fair market value of the assets and the basis which the parent used to record the assets on its books (carryover basis). Any gain on the difference between the basis of the stock of the subsidiary and the basis of the assets from the subsidiary would be recognized and reported by the parent.
3. If the basis in the stock exceeds the basis in assets, a loss may not be recognized, but the basis in the assets may be increased to equal the basis in the stock.
4. Under no circumstances is a gain on a liquidation, transfer of assets, distribution of assets or a reorganization forgiven.

105 Spin-Offs:

1. A Section 355 Distribution is a distribution of voting stock (at least 80% of voting stock) to the shareholder corporation of the distributing parent corporation (i.e. a spin-off). To qualify under Section 355, the corporation must have been engaged in active business for five years preceding the spin-off and there must be a continuing active business after spin-off. The transaction cannot be used principally as a device for the distribution of earnings and profits. There must be a germane business reason beyond the avoidance of tax for the distribution.
2. Section 27-7-9(j)3 provides that no gain shall be recognized on a distribution to a stockholder of a corporation if such gain would not be recognized to such stockholder for Federal income tax purposes under the provisions of Section 355 of the Federal Internal Revenue Code. The shareholder would take the same basis as the basis of the distributing corporation prior to distribution, plus any gain recognized and reported by the distributing corporation.
3. The distributing corporation in a 355 Distribution must report the gain on the distribution. The gain would be the difference between the fair market value of the stock and the basis of the stock immediately prior to any adjustment in contemplation of distribution of the stock. Corporations with one hundred percent

(100%) of their income reportable to Mississippi should report the gain in full to Mississippi. Multistate corporations would determine their gain according to the method of reporting the dividend income from such subsidiary to Mississippi. For example: A multistate corporation which has a unitary subsidiary that would apportion dividends from this subsidiary to Mississippi would also apportion the gain on the distribution to Mississippi. Allocated dividends would require allocation of gain from the stock of the subsidiary.

4. A corporation which makes a 355 Distribution and is included in a combined return for Mississippi, as provided by Section 27-7-37 of the Mississippi Code, would also be required to report the gain on distribution whether or not the parent's shareholder is a part of the combined group before or after the distribution.
5. No credit is allowed to the shareholder corporation receiving the distribution unless the shareholder must report the gain for Federal purposes. If the shareholder is required to report the gain for Federal purposes, the same requirement would exist for Mississippi purposes.

106 Collapsible Corporations:

The entire gain from: (1) the actual sale or exchange of stock of a collapsible corporation, (2) amounts distributed in complete or partial liquidation of a collapsible corporation which are treated as payment in exchange for stock, and (3) a distribution made by a collapsible corporation, which is treated in the same manner as a gain from the sale or exchange of property, shall be considered as gain from the sale or exchange of property and such gain shall be treated as ordinary income.

107 Partial liquidation defined:

A distribution is treated as in partial liquidation of a corporation if:

1. The distribution is one of a series of distributions in redemption of all the stock of the corporation pursuant to a plan of complete liquidation, or
2. The distribution is:
   a. not essentially equivalent to a dividend,
   b. in redemption of a part of the stock of the corporation pursuant to a plan, and
   c. occurs within the taxable year in which the plan is adopted or within the succeeding taxable income.

108 (Reserved)

109 (Reserved)

Chapter 02 Reorganizations

100 The Commissioner will follow Federal Rules, Regulations, and Revenue Procedures relating to Reorganizations as are not deemed contrary to the context and intent of Mississippi Law.

101 (Reserved)

102 (Reserved)

Chapter 03 Election of Certain Small Business Corporations—(S Corporations)

100 Definitions: As they pertain to this regulation:

1. "Small business corporation" or "S corporation" means a domestic corporation which is not an ineligible corporation and does not:
   a. have more than 35 shareholders,
   b. have as a shareholder a person who is not an individual, other than an estate and certain trusts,
   c. have a nonresident alien as a shareholder, and
   d. have more than one (1) class of stock.
2. **"Electing small business corporation"** means with respect to any taxable year, a small business corporation for which an election under section 1362 (a), I. R. C., is in effect for such year.
3. For purposes of this regulation, the term **"domestic corporation"** means a corporation created or organized in the United States or under the law of the United States or of any State or Territory.

101 Conformity with Internal Revenue Code. The provisions of section 1361 et seq. (S corporation) of the Internal Revenue Code with respect to definitions, elections, qualifications, special rules, etc., not in direct conflict with the provisions of the Mississippi Income Tax Law of 1952, as amended, shall have full effect and force as to the administration of this regulation.

102 Election by S corporation. An S corporation having made a valid election for Federal income tax purposes must make a similar election for Mississippi income tax purposes. The granting of the election for Mississippi purposes is contingent upon the granting and approval of the election for Federal purposes. Such election shall be filed with the State Tax Commission within 60 days of the date filed for Federal purposes. The prescribed form shall contain, in addition to any required information, a consent statement from each shareholder of the corporation.

102.01 Termination of an election for Federal purposes shall automatically terminate the election for Mississippi purposes.

103 Corporation undistributed taxable income taxed to shareholders.

1. Inclusion in gross income. Each person who is a shareholder during the year of an electing S corporation shall include in his gross income, for his taxable year in which or with which the taxable year of the corporation ends, the pro rata amount he would have received as income (or deduction) by the corporation as determined below.
2. Determination of amount included by shareholder. A shareholder's pro rata share of an S corporation item of income (or deduction) is generally determined by:
   a. assigning an equal portion of each day of the corporation's taxable year (1/365 except for a leap year or a short taxable year),

b. allocating that daily portion pro rata among the shares outstanding on each such day, and

c. totaling the shareholder's daily portion of the item as determined under (a) and (b) above.

3. A transferee shareholder is considered to be the owner of stock on the day it is transferred.

4. In years in which there is no change in shareholders or in the relative interest of those shareholders, a shareholder's pro rata share of an item is simply the annual amount of that item multiplied by the shareholder's percentage of total stock outstanding.

104 Net Operating losses involving S corporations.

1. Deduction not allowed to corporation. An S corporation is not allowed a deduction for a net operating loss. The net operating loss is passed through to the shareholders subject to the following restrictions.

2. Limitation on deduction for shareholders.

a. The amount of the net operating loss of the S corporation for any taxable year which may be deducted by any shareholder shall not exceed the sum of:

i. The adjusted basis of the shareholder's stock in the S corporation, and

ii. The adjusted basis of any indebtedness of the corporation to the shareholder.

iii. If a shareholder's pro rata share of the corporation's net operating loss exceeds the limitation imposed, such excess is allowable as a net operating loss carryover or carryback as allowed under Section 27-7-17.

b. Time for determining basis of stock and indebtedness. The adjusted basis of the stock of, or indebtedness to, a shareholder for purposes of the limitation in (a) above is determined as of the close of the taxable year of the corporation, except that

i. the adjusted basis of stock which is sold or otherwise disposed of during the taxable year of the corporation is determined as of the close of the day before the day of such sale or other dispositions, and

ii. If the shareholder is not a shareholder as of close of the taxable year of the corporation, the adjusted basis of any indebtedness of the corporation to the shareholder is determined as of the close of the last day which he was a shareholder in such taxable year.

3. A shareholder is not allowed to deduct any loss attributable to the corporation prior to electing an S corporation status.

105 Special rules application to capital gains. Mississippi Law does not conform with Federal Law with respect to the tax treatment of capital gains, therefore, the amount includable by a shareholder in gross income from an S corporation during any taxable year of such corporation shall be treated as ordinary income.

106 Adjustments to the basis of stock of, and indebtedness owing shareholders.

1. Increase in basis of stock. The basis of shareholder's stock in an S corporation is increased by the amount required to be included in the gross income of such shareholder, but only to the extent to which such amount is actually included in his gross income on his income tax return, increased or decreased by any adjustment of such amount in any redetermination of the shareholder's tax liability. This increase in basis will affect only those shares of stock of the S corporation which the shareholder owned at the end of the corporation's taxable year and is apportioned in equal amounts to each share. The increase is effective as of such last day, and survives a termination of the corporation's election.
2. Reduction in basis of stock. The basis of a shareholder's stock in an S corporation is reduced by an amount equal to his portion of the corporation's net operating loss for any taxable year attributable to such stock. However, the basis of such stock is not to be reduced below zero.
3. Reduction in basis of indebtedness. The basis of any indebtedness of an S corporation to a shareholder is reduced by an amount equal to the shareholder's portion of the corporation's net operating loss for the taxable year, but only to the extent that such amount exceeds the basis of the shareholder's stock in the corporation. Thus, the amount of the shareholder's portion of the net operating loss is first applied in reduction of the basis of his stock in accordance with the rules of subparagraph (2) above, and only the remainder, if any, reduces the basis of the indebtedness.

107 Special rules. The Commissioner will follow the provisions of Section 1371, IRC, and Regulations thereunder, with respect to the special rules applicable to earnings and profits of S corporations.

108 Special tax (Federal) on S corporations. Mississippi Law does not impose a special tax on capital gains of S corporations, therefore, the Commissioner will not follow the provisions of the IRC. Since capital gains are not taxed directly to the S corporation, the amount of such capital gains shall not be used to reduce the amount of income taxable to the shareholder.

108.01 Mississippi Law does not have a special tax on passive investment income, therefore, the pass-through income to shareholders shall not be reduced by the amount assessed at the federal level, and will not follow the provisions of Section 1375 in this respect.

109 Liability of corporation. If any of the shareholders of the S corporation are nonresidents of the State of Mississippi, the corporation shall be subject to Mississippi income tax on the part of the corporate income allocable to the share of stock owned by the nonresident shareholders unless the corporation files with its Mississippi return for the taxable year an agreement executed by each nonresident shareholder wherein said shareholder agrees to pay Mississippi income tax on his proportionate part of the corporation's Mississippi taxable income. Nonresident agreements shall be executed by completing Form 62-381. Failure to secure an agreement from nonresident shareholders for the taxable year or failure

of the nonresident shareholder to file a timely return and pay the tax when due, even in cases where Form 62-381 is executed, shall render the S corporation liable for the tax due.

110 Liability of shareholders. A resident shareholder in a qualified S corporation must report his share of taxable income on his Mississippi Resident Individual Income Tax Return. A nonresident shareholder in such corporation must report on his Mississippi nonresident individual income tax return, income that was derived from sources within Mississippi. If the total taxable income of the corporation is from Mississippi sources, the total pro rata share of income to each nonresident shall be reported in full to Mississippi.

110.01 If the corporation's taxable income is from sources within and without Mississippi and would have been apportioned or allocated partly within and partly without Mississippi by the corporation, only that part of taxable income of the corporation assignable to Mississippi shall be considered in reporting distributions to nonresidents.

111 Resident shareholders in nonresident (foreign) S corporation. A resident of Mississippi owning stock in an S corporation doing business and realizing taxable income in a foreign state shall include in Mississippi gross income his pro rata share of taxable income (or loss) of the S corporation but only to the extent that the state in which the taxable income was earned by the corporation has adopted the Federal tax treatment (Subchapter S, IRC) of an S corporation and such corporation has so elected to be treated as an S corporation in such state. A tax credit shall be allowed against the Mississippi tax due on such taxable income reported to another state by the Mississippi resident.

111.01 If the foreign state in which the taxable income of an S corporation is earned or realized has not, for the corporation's taxable year, adopted the Federal tax treatment of an S corporation, the Mississippi resident's pro rata share of taxable income (or loss) of the S corporation shall be excluded from the gross income of the Mississippi resident. In such case, the Mississippi resident must report only dividends or other income actually distributed to such resident by the corporation in the taxable year of the resident.

112 Filing requirements. An S corporation chartered under the laws of Mississippi, or an S corporation chartered under the laws of another state or territory and "doing business" in Mississippi and having an election in effect to be treated as an S corporation within the purview of Section 1362 (a), IRC, and as automatically provided in Section 27-7-29 (b), Mississippi Code, and this Regulation, shall, on or before the 15th day of the third month following the close of its taxable year, file an annual combined return of corporation income and franchise tax, on Mississippi Form 62-300. All schedules, where applicable, in Form 62-300 must be completed by the S corporation in the same manner as for any other corporation, with the exception of Schedule B, relating to computation of income tax. If the S corporation is not, as otherwise provided in paragraph (J), liable for Mississippi tax, so indicate on Line 11, Schedule B, that the taxpayer is an S corporation. All S corporations must complete Schedule X and Schedule Y. If any of the shareholders listed in Schedule Y are not legal or actual residents of Mississippi, a nonresident agreement (Form 62-381) for each such nonresident must be attached to and made a part of Form 62-300 as filed by the corporation. Failure on the part of the corporation to secure a complete Form

62-381 from each of its nonresident shareholders renders the corporation liable for Mississippi income tax.

112.01 An S corporation is allowed to file a composite return on behalf of its shareholders in very limited circumstances. A composite return is a return in which an S corporation pays the income tax due for some, or all, of its shareholders. The only shareholders who are eligible to be included in the composite return are nonresident shareholders without any activity in Mississippi other than that from the S corporation.

112.02 Resident shareholders and nonresident shareholders with other activity in Mississippi cannot be included in a composite return. Each of these shareholders must file his own return.

112.03 If a composite return is filed, the S corporation return is completed like any other S corporation return, but an additional schedule is attached listing the shareholder's identification or social security number and the shareholder's distribution that is to be included in the composite return. The S corporation then pays the tax on this income at the regular corporate rate. If the S corporation wants a deduction for the individual's personal exemptions and standard deductions, then instead of paying tax on the corporate return, the composite return income is reported on one nonresident individual return under the S corporations name and identification number. On this return, the corporation is allowed to deduct 10% of the adjusted gross income of the nonresident individuals reported on this return up to a maximum of $5,000 per composite return.

112.04 Once an S corporation begins filing a composite return, it must continue unless permission to change is granted in writing by the Commissioner.

112.05 An S corporation is not relieved from the payment of franchise tax. Schedules in Form 62-300 relating to such levy must be completed and made a part of the return. The franchise tax, plus any penalty, interest, or applicable income tax, are due and payable in full by the original due date of the return.

112.06 An income tax credit allowed to an S corporation may be passed on to the shareholders but may only be used to offset and reduce tax on income of the S corporation allocated to the shareholders. The shareholders are not allowed to receive a greater benefit than the corporation would have received, if the corporation were taxable.

113 (Reserved)

114 (Reserved)

Chapter 04 Charitable Contributions—Corporation

100 The deduction by a corporation in any taxable year for charitable contributions is limited to twenty percent (20%) of its taxable income for the year, computed without regard to the deduction for charitable contributions. Mississippi Law does not conform with Federal Law

relative to the percentage limitation on contributions by corporations, or with the definition of a charitable contribution by a corporation. A deduction, subject to the limitation, is allowed only with respect to contributions to corporations, organizations, associations or institutions, including community chest funds, foundations and trusts created solely and exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inure to the benefit of any private stockholder or individual.

101 Deductions are allowed for qualifying charitable organizations located in any state.

102 Mississippi does not allow excess contributions to be carried over and deducted in succeeding years.

103 (Reserved)

104 (Reserved)

Chapter 05 Foreign Sales Corporations (FSC's)

100 Mississippi does not follow Federal Law or Regulations as they relate to Foreign Sales Corporations except as noted below. For Mississippi purposes an FSC is treated as a normal corporation. Any sale to an FSC must be at arms-length. Any expense reimbursement must be reasonable based on the service performed or the expense incurred by the FSC.

101 Instead of adjusting all transactions to an arms-length basis, the Commissioner may allow the FSC to consolidate with the parent or other corporation if the result clearly reflects Mississippi income. This will be decided on a case by case and a year to year basis.

102 Because of the two preceding paragraphs, dividends paid by the FSC to the parent will not be included in apportionable income of the parent.

103 Mississippi does follow Federal tax treatment in connection with non-recognition of gain on the transfer of assets from a Domestic International Sales Corporation (DISC) to a Foreign Sales Corporation (FSC).

104 (Reserved)

105 (Reserved)

Chapter 06 Multistate Taxation

100 This regulation is composed of three sections.

1. General topics and definitions.
2. Computation of income.
3. Methods of reporting income.

101 (Reserved)

200 General Topics and Definitions

201 Corporations Required to File

201.01 Every domestic corporation (those chartered in Mississippi) is subject to the income tax levy and is required to file annual income tax returns unless such corporations is specifically exempt from tax within the purview of Code Section 27-7-29.

201.02 Every foreign corporation (those chartered outside Mississippi) which has obtained a certificate of authority from the Secretary of State to do business in Mississippi, or which is in fact doing business, as defined, in Mississippi, regardless of qualifications, is subject to the income tax levy and is required to file annual income tax returns unless corporation is specifically exempt from tax within the purview of Code Section 27-7-29.

201.03 All corporations subject to the filing requirements of the paragraphs above must file an income tax return for each year including a tax year or years in which the corporation was inactive, did not earn any net income, or operated a part of the year. An annual return must be filed until the corporation, foreign or domestic, is legally withdrawn or dissolved.

202 Definitions

202.01 Commercial Domicile. **"Commercial domicile"** means the principal place from which the trade or business of the taxpayer is directed or managed.

202.02 Taxpayer. **"Taxpayer"** means any individual, partnership, corporation, association, trust or estate, whose income is, in whole or in part, subject to a tax imposed by the Mississippi Income Tax Law of 1952, as amended, being Section 27-7-1 et seq., Mississippi Code of 1972, or any such person who is subject to the filing requirements of this Regulation.

202.03 Apportionment**. "Apportionment"** refers to the division of business income between states by the use of a formula containing apportionment factors.

202.04 Allocation. **"Allocation"** refers to the assignment of income to a particular state.

202.05 Business Activity. **"Business activity"** refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer.

202.06 Taxable In Another State. The term **"taxable in another state",** for the purposes of this Regulation, shall mean that the taxpayer is subject to net income tax or any tax measured by net income; or the other state has jurisdiction to subject the taxpayer for tax measured by net income regardless of whether, in fact, that state exercises such jurisdiction. The definition for "subject to" income tax in another state will be determined by using the

definition for "doing business" defined above and in section 203 below and in the following paragraph.

1. A taxpayer is "subject to" one of the taxes specified in the paragraph above only if it carries on business activities in another state. If the taxpayer voluntarily files and pays one or more of such taxes when not required to do so by the laws of that state or pays a minimum tax or fee for qualification, organization, or for the privilege of doing business in that state, but does not actually engage in business activities in that state, or does actually engage in some activity, not sufficient for nexus, and the minimum tax or fees bears no relation to the corporation's activities within such state, the taxpayer is not "subject to" one of the specified taxes and is therefore not "taxable" in another state.
2. Jurisdiction to tax is not present when the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U.S.C.A. Sections 381-385.

203 Nexus

203.01 Doing Business. For Mississippi income tax purposes, the term "doing business" means the operation of any enterprise or activity in Mississippi for financial profit or economic gain. For the purposes of this regulation, the terms **"doing business"** and **"nexus"** have the same meaning. Doing Business includes, but is not limited to, the following:

1. The regular maintenance of an office or other place of business in Mississippi.
2. The regular maintenance in Mississippi of an inventory of merchandise or material for sale, distribution or manufacture, regardless of whether kept on the premises of the taxpayer, in a public or rented warehouse, or otherwise.
3. The selling or distributing of merchandise to customers in Mississippi directly from a company-owned or operated vehicle when title to the merchandise is transferred from the seller or distributor to the customer at the time of the sale or distribution.
4. The regular rendering of a service to clients or customers in Mississippi by agents or employees of a foreign corporation.
5. The owning, renting, or operating of business or income-producing property, real or personal, in Mississippi.
6. The performing of contracts, prime or sublet work, for the construction, repair or renovation of real or personal property.

203.02 A corporation doing business in Mississippi is subject to income tax even if its only operations in this state are a part of its interstate business. A foreign corporation whose only activity in this state is the solicitation of sales by either resident or nonresident salesmen is not required to file income tax returns. However, if a corporation maintains an office or other place of business in Mississippi, or if it owns income-producing property in this state, or is otherwise qualified to do business, or is otherwise certified to do business in Mississippi by the Mississippi Insurance commission, or in fact is doing business in Mississippi with respect to other activities, it is subject to tax and the requirements of filing returns.

203.03 This regulation intends to adopt a narrow interpretation of the immunity afforded by Public Law 86-272, which grants a limited immunity to a multistate company from taxation by a

state if the company's activity is limited to the solicitation of orders for the sale of tangible personal property in interstate commerce.

203.04 Only the sale of tangible personal property is afforded immunity under Public Law 86-272; therefore, the selling or providing of services, and the selling, leasing, renting, licensing or other disposition of real estate, personal property intangibles, or any other type of personal property are not immune from taxation by reasons of P. L. 86-272.

203.05 For the in-state activity to be immune, it must be limited solely to solicitation (except for that activity conducted by independent contractors in subsection 203.05 paragraph 3 below). If there is any other activity unrelated to solicitation, the immunity shall be lost. Examples of activities presently treated (unless otherwise stated as an exception or addition) as either non-immune or immune are as follows:

1. Non-immune Activities: The following in-state activities will cause otherwise immune sales to lose their immunity:
    a. Making repairs or providing maintenance.
    b. Collecting delinquent accounts.
    c. Investigating credit worthiness.
    d. Installation or supervision of installation.
    e. Conducting training courses, seminars or lectures.
    f. Providing engineering functions.
    g. Handling customer complaints.
    h. Approving or accepting orders.
    i. Repossessing property.
    j. Securing deposits on sales.
    k. Picking up or replacing damaged or returned property.
    l. Hiring, training, or supervising personnel.
    m. Providing shipping information and coordinating deliveries.
    n. Maintaining sample or display room in excess of two weeks (14 days) during the tax year.
    o. Carrying samples for sale, exchange or distribution in any manner for consideration or other value.
    p. Owning, leasing, maintaining or otherwise using any of the following facilities or property in-state:
        i. Repair shop.
        ii. Parts department.
        iii. Purchasing office.
        iv. Employment office.
        v. Warehouse.
        vi. Meeting place for directors, officers or employees.
        vii. Stock of goods.
        viii. Telephone answering service.
        ix. Mobile stores, i.e., trucks with driver salesmen.
        x. Real property or fixtures of any kind.
    q. Consigning tangible personal property to any person, including an independent contractor.

r. Maintaining, by either an in-state or an out-of-state resident employee, of an office or place of business (in-home or otherwise).

s. Conducting any activity in addition to those described in paragraph II below which is not an integral part of the solicitation of orders.

2. Immune Activities: The following in-state activities will not cause the loss of immunity for otherwise immune sales:

a. Advertising campaigns incidental to missionary activities.

b. Carrying samples only for display or for distribution without charge or other consideration.

c. Owning or furnishing autos to salesmen.

d. Passing inquiries and complaints on to home office.

e. Incidental and minor advertising, i.e., notice in newspaper that a salesman will be in town at a certain time.

f. Missionary sales activities.

g. Checking of customers' inventories (for re-order, but not for other purposes).

h. Maintaining sample or display room for two weeks (14 days) or less during the tax year.

i. Soliciting of sales by an in-state resident employee of the taxpayer; provided the employee maintains no in-state sales office or place of business (in-home or otherwise).

3. Independent Contractors:

a. P.L..86-272 provides immunity to certain activities if conducted by an independent contractor that would not be afforded if performed by the taxpayer directly. Independent contractors may engage in the following limited activities in the state without the taxpayer's loss of immunity:

i. Soliciting sales.

ii. Making sales.

iii. Maintaining a sales office.

b. Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as employees.

c. Maintenance of a stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the principal shall remove the immunity.

4. Miscellaneous Practices:

a. Interstate Commerce: The only activity in the state must be in interstate commerce. If there is any other activity (except that described subsection 203.05 paragraph 2 or otherwise incidental to solicitation), then the immunity shall be lost. Requisites are:

i. Approval of the sales must be made outside the state (except for sales by independent contractors).

ii. Deliveries must be made from a point outside the state.

b. Incorporated: The immunity afforded by P. L. 86-272 does not apply to any corporation incorporated within the taxing state.

c. Service vs. Service: Sales of services are not immune under P. L. 86-272. If a sale consists of a mixture of tangible personal property and services, the immunity shall be lost. Examples of such mixture are:
   i. Photographic development.
   ii. Fabrication of customer's materials.
   iii. Installation of equipment.
   iv. Architectural and engineering services.

204 (Reserved)

300 Computation of Income

301 Business and Nonbusiness Income. Business income means income arising from transactions and activities in the regular course of the taxpayer's trade or business and includes income from real, tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. In essence, all income which arises from the conduct of trade or business operations of a taxpayer's is business income. The income of the taxpayer is business unless clearly classifiable as non-business income.

301.01 Non-business income means all income other than business income.

301.02 The classification of income into categories customarily used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, non-operating income, etc., does not determine whether income is business or non-business income.

301.03 Some of any type or class and from any source is business income if it arises from transactions and activities occurring in the regular course of a trade or business.

301.04 Transactions between affiliated taxpayers, groups, or parties shall be calculated on an arms-length basis. Transactions determined not to be at fair market value may be recomputed on review of such transactions or the Commissioner may prescribe an alternate method of reporting by the taxpayer.

302 Allocation or Apportionment. A taxpayer should use section 400 to determine the method of reporting income to Mississippi for its major line(s) of business. For the following items of income, when they are considered to be general or administrative income by the commissioner, the following rules should be used to determine the way the income is reported. If the income is determined to be business income it should be apportioned; those items determined to be non-business income should be allocated. If the taxpayer is using a formula method of apportionment, then the items below that are classified as business income would be included in apportionable income. If the taxpayer is not required to use a formula method of apportionment or if the taxpayer is using divisional accounting, then the items below that are considered business income shall be apportioned using a sales ratio.

302.01 The following are general rules for determining whether specific income is business or non-business income.

1. RENTS FROM REAL AND TANGIBLE PERSONAL PROPERTY. Rental income from real and tangible property is business income if the income producing property is used by the taxpayer's trade or business. If rental income is from an asset which is purely an investment, then it is non-business.
2. GAINS OR LOSSES FROM SALES OF ASSETS. Gain or loss from the sale, exchange or other disposition of real, tangible, or intangible personal property constitutes business income if the property while owned by taxpayer was used in the taxpayer's trade or business, or was used to produce business income, regardless of whether the asset has actually produced income. However, if such property was utilized for the production of non-business income, the gain or loss will constitute non-business income.
3. INTEREST. Interest income is business income where the intangible, with respect to which the interest was received, arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to such trade or business operations. Business income shall not, however, include interest income on loans to subsidiaries or affiliates which are not organized under the laws either of the United States, or any state, district, territory or possession thereof.
4. FOREIGN SOURCE INTEREST.
    a. Interest that is derived from a source outside of the United States, or any state, district, territory or possession of the United States is non-business interest.
    b. In general, all other interest is business income. A partial listing for illustrative purposes of interest that is considered to be business income is interest on accounts receivable, certificates of deposit, money market accounts, tax refunds, and municipal obligations. Municipal obligations of the state of Mississippi are exempt.
5. DIVIDENDS.
    a. Dividends are business income where the stock, with respect to which the dividends are received, arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to such trade or business operations. Business income shall not, however, include foreign source dividends realized from stock ownership in a corporation not organized under the laws either of the United States, or any state, district, territory or possession thereof.
    b. Dividends from domestic, unitary, and controlled subsidiaries are business income. Dividends from foreign, non-unitary, and/or non-controlled corporations are non-business income. Dividends from Domestic International Sales Corporation (DISC's) are business income. For treatment of dividends from a Foreign Sales Corporation (FSC's) see the regulation on FSC's. Dividends from a DISC are business income to the extent actually

received, not deemed as is used for federal purposes. Descriptions of domestic, controlled, and unitary corporations are as follows:

i. DOMESTIC. Means any corporation organized under the laws of the United States, or any other state, territory or possession thereof.

ii. CONTROLLED. In this context, controlled is defined as being:

- Where one corporation owns more than 50% of another corporation; or
- If ownership by one corporation of another is 50% or less, then the question is whether the first corporation has effective control of the second. If the first corporation does not have effective control of the second, then dividends paid by the second corporation to the first is non-business income. For example, if the first corporation owns 40% of the second corporation, but the remaining 60% is owned by one entity unrelated to the first corporation, then the first corporation does not have effective control. But, if the first corporation owns 40% of the second corporation, and the remaining 60% is owned by the thousands of unrelated shareholders, each with a small percentage, then, in that circumstance, the first corporation would have effective control. If a corporation is controlled or effectively controlled, then the dividends may be business income, depending upon whether this corporation is also domestic and unitary.

iii. UNITARY. In general, unitary depends upon the extent that the different entities have been integrated into one economic operation. Some of the items to be considered include autonomy of officers and directors of the different corporations; lines of business; number, size, and type of inter-company transactions, and jointly used services such as accounting or tax department. The above list is not all inclusive. It is only for the purpose of illustrating some of the points to be considered in determining whether the entity paying the dividends is unitary with the entity receiving the dividend.

6. PATENT AND COPYRIGHT ROYALTIES. Patent and copyright royalties, including royalties from non-patented items such as "know-how", technical assistance, and use of product name, are business income where the patent or copyright arises out of or was created in the regular course of the taxpayer's trade or business operations, or where the purpose for acquiring and holding the patent or copyright is related to or incidental to such trade or business operations.

7. MISCELLANEOUS INCOME. In general, miscellaneous income, such as scrap sales or collections of bad debts written off, is business income.

8. EXCEPTIONS. Royalty income from mineral production must be allocated to the state where production occurred. Partnership income is allocated directly to the state where the partnership gross income or loss occurred.

303 Allocation of Non-Business Income**.** Non-business net rents and royalties from real property are allocated to the state where the property is located.

303.01 Non-business net rents and royalties from tangible personal property are allocable to this state: (i) if and to the extent that the property is utilized in this state, or (ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

303.02 The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in this state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year.

303.03 CAPITAL GAINS AND LOSSES. Non-business capital gains and losses from sales of real property are allocable to the state where the property is located.

303.04 PROPERTY. Capital gains and losses from sales of tangible personal property are allocable to this state if the property had a situs in this state at the time of sale, or the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

303.05 INTANGIBLE PROPERTY. Non-business capital gains and losses from sales of intangible personal property are allocable to this state, if the taxpayer's commercial domicile is in this state and the intangible has not acquired a commercial, business or actual situs in another state, or the taxpayer's commercial domicile is not in this state, but the intangible has acquired a commercial, business or actual situs in this state.

303.06 INTEREST AND DIVIDENDS. Non-business interest and dividends are allocable of the state of commercial domicile.

303.07 PATENTS AND COPYRIGHTS.

1. Patent and copyright royalties are allocable to this state if and to the extent that the patent or copyright is utilized by the payer in this state, or if to the extent that the patent or copyright is utilized by the taxpayer in a state in which the taxpayer is not taxable and taxpayer's commercial domicile is in this state.
2. A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state.
3. A copyright is utilized in a state to the extent that printing or other publication originates in the state.

304 Consistency and Uniformity in Reporting**.** In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or non-business income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

400 Methods of Reporting Income.

401 Basis of Filing

401.01 TOTAL ASSIGNMENT OF INCOME. If the business activity of a taxpayer occurs within this state, and if by reason of such business activity the taxpayer is not taxable in another state, the total net income (or loss) of the taxpayer shall be assigned to Mississippi.

401.02 DIRECT OR SEPARATE ACCOUNTING**.**

1. Any taxpayer, taxable both within and without this state, which maintains or could maintain books of account detailing allocation of receipts and expenditures reflecting clearly the business income attributable to property owned or business done in this state, shall determine Mississippi net business income on the basis of direct or separate accounting.
2. Non-allocable general administrative expenses, and non-allocable net business income derived from sales of capital assets, interest, dividends, rents, royalties and other non-allocable business income shall be apportioned to Mississippi on the basis of a sales ratio.
3. In the case, however, of contractors, the non-allocable general and administrative expenses apportioned to this state shall be determined by using the ratio between Mississippi direct job cost and total direct job cost.
4. If at the discretion of the Commissioner a sales ratio does not fairly apportion the above items of income and expense, another ratio, such as an asset ratio, may be required.
5. If a taxpayer feels that a sales ratio does not fairly apportion the above mentioned income or expense among all business activity, then the taxpayer may make application in writing to the Commissioner. This application must explain why the sales ratio does not fairly apportion and specify the ratio that the taxpayer wishes to use. The taxpayer shall not use this other ratio unless approved in writing by the Commissioner.

401.03 ALLOCATION OF INCOME. Any taxpayer subject to the taxing jurisdiction of this state shall allocate non-business income or loss within and without this state in accordance with the further provisions of this Regulation. All expenses connected with earning non-business income, such as interest, taxes, general and administrative expenses and such other expenses relating to the production of non-business income, shall be deducted from gross non-business income. Non-business interest expense shall be computed by using the ratio of non-business assets to total assets applied to total interest expense. To the amount of non-business income allocated to this state, there shall be added the amount of net business income assigned, directly allocated or apportioned to this state under the other provisions of this Regulation to establish Mississippi taxable income.

401.04 APPORTIONMENT OF INCOME. If the business activity in respect to any trade or business of a taxpayer occurs both within and without this state, and if by reason of such business activity the taxpayer in another state, portion of the net income (or net loss) arising

from such trade or business which is derived from sources within this state shall be determined by apportionment in accordance with the further provisions of this regulation, where direct or separate accounting of net income or loss is not feasible**.**

401.05 DIVISIONAL ACCOUNTING. If the business activity of a taxpayer is conducted on a divisional basis and a division or divisions of the taxpayer are "doing business" within this state, the Mississippi taxable income of the taxpayer, where separate accounting is or can be maintained on each division, shall, at the election of the Commissioner, be determined on a divisional accounting, nexus is determined on a company-wide basis. Therefore, any division that has activity in Mississippi must compute its Mississippi taxable income using the proper method for that division. (Example: If Mississippi has nexus on a corporation because of one division's activity in the state, and a second division is a manufacturing division with only destination sales into Mississippi, then the second division shall apportion a share of its income or loss to Mississippi, even though, if it were a separate legal entity, it would not be required to do so.) The following shall apply to divisional accounting:

1. If the total net business income of a division or divisions of the taxpayer is derived solely from business activities in Mississippi and such division or divisions, when considered the same as a separate entity, are not taxable in another state, the total net business income derived from a trade or business activity of such division or divisions shall be directly assigned to Mississippi. Business income, on a company-wide basis, derived from sales of capital assets, interest, dividends, rent and royalties shall be apportioned to Mississippi in the ratio that total sales of the included division or divisions bears to total company-wide sales everywhere. Non-business income of the taxpayer shall be allocated to Mississippi in accordance with the further provisions of this Regulation.
2. If the business income of a division or divisions of the taxpayer is derived from business activities both within and without the state and by reason of such business activities such division or divisions, when considered the same as a separate entity, are taxable in another state, Mississippi taxable income shall be computed and determined as follows:
    a. The total net business income derived from a trade or business activity of each division doing business in Mississippi shall be determined on a divisional direct or separate accounting basis. In determining the net business income for each division, a proportionate part of non-allocable general and administrative expenses may be deducted by using the ratio that total sales (gross receipts) of each division bears to total company-wide sales (gross receipts).
    b. Business income, on a company wide basis, derived from the sale of capital assets, interest, dividends, rents and royalties shall be apportioned to each division in the ratio that total sales (gross receipts) by the division bears to total company wide sales (gross receipts).
    c. The amounts determined in the above paragraphs, shall be combined of each division. If more than one division is involved, separate combinations are required for each division.

d. To the combined amount determined in the previous paragraph, for each division, there shall be applied the apportionment formula specified in this Regulation for the trade or business activity of the division. Separate computations are required for each included division. The amount so apportioned to Mississippi for each division may be combined to determine the total apportioned amount of business income of the taxpayer assignable to Mississippi.

e. The non-business income of the taxpayer shall be allocated to Mississippi in accordance with the further provisions of this Regulation.

f. The total of the amount apportioned and the total of the amount allocated for all divisions when combined, shall constitute the Mississippi taxable income of the taxpayer.

401.06 CONSOLIDATED OR COMBINED RETURNS. See Regulation on Consolidated and Combined Returns.

402 Computation of Basis of Filing.

402.01 Business Income of Producers of Mineral or Natural Resource Products.

1. Taxpayers engaged in the trade or business of producing oil, gas, other liquid hydrocarbons, sulphur, coal, sand, gravel and other mineral or natural resource products, except timber, shall determine Mississippi net business income from such activity on a direct or separate accounting basis. The Mississippi gross business income from the production of mineral or natural resources shall include:

   a. Sales of natural or mineral resources produced in Mississippi and sold in this state;

   b. The market value, at the time of transfer, of all natural or mineral resources produced in this state and transferred by the taxpayer to another state for sale, refining, processing or manufacturing, provided that if the natural or mineral resources are sold by means of an "arms-length" transaction prior to refining, processing or manufacturing, the market value prescribed herein shall not exceed the selling price; and;

   c. The market value, at the time of transfer, of all natural or mineral resources produced by the taxpayer in Mississippi and transferred to a refinery, processing plant, or manufacturing facility of the taxpayer in Mississippi.

2. A natural resource product shall be deemed to be sold in Mississippi if it is located in this state at the time title thereto passes to the purchaser. In the absence of specific proof of value of natural resources at the time of transfer from the state, the value of natural resources at the time of production shall be determined in accordance with the methods prescribed for the determination of "gross income from the property" for purposes of percentage depletion for federal income tax purposes.

402.02 Business Income of Contractors

1. The net business income of taxpayers engaged in the business of contracting shall be accounted for and assigned directly to this state for each contract performed

within this state. Taxpayers engaged in the business of contracting both within and without the state shall determine such job cost which cannot be specifically allocated to the Mississippi contract by multiplying such non-allocable business-related expenses in the ratio that Mississippi direct job costs bears to total direct job costs.

2. Where a contract is performed partly within and partly without the state, the net business income assignable directly to Mississippi shall be determined by first deducting from the total contract receipts those job costs directly allocable to said contract and then deducting a pro-rata part of expenses which cannot be directly allocable to any contract, said pro-rata part to be determined by using the ratio between the contract direct job costs and the direct job costs of total contracts. The net business income from the contract, thus determined, shall then be apportioned to Mississippi in the ratio that receipts from said contract allocable to Mississippi for sales tax purposes bears to the total receipts from said contract. In the event that no allocation has been or can be made of the Mississippi gross receipts from said contract for Mississippi sales tax purposes, and the Mississippi gross receipts from said contract cannot otherwise be determined, then the apportionment of the net business income from the contract to Mississippi shall be made by such reasonable method as is acceptable to the Commissioner.

3. In the case of a prime contractor, who enters into a contract with a subcontractor for the performance of all or part of a contract within the State of Mississippi, both prime contractor and subcontractor are required to report any and all income from such contracts.

4. The net business income derived by a contractor from gains or losses from sales of capital assets, interest, dividends, rents and royalties shall be apportioned to Mississippi by multiplying such net business income by a receipts factor, the numerator of which is the total receipts located, assignable, allocated, or otherwise having a situs in this state during the tax year, and the denominator of which is the total receipts of the taxpayer everywhere during the tax year. In the case of sales of capital assets (buildings, land, depreciable machinery and equipment, stocks, bonds, etc.) receipts, for purposes of the receipts factor, shall include only the net gain or loss resulting from such sales of capital assets.

402.03 Business Income of Airlines. If an airline has any activity other than simply passing over this state, then it is "doing business" in this state and is required to file a return. The net business income of an airline company which has not been directly assigned, allocated or excluded as otherwise provided by this Regulation shall be apportioned to this state as provided in this section.

1. PASSENGER TRAFFIC INCOME. Business income from passenger traffic shall be apportioned to this state in the ratio that Mississippi revenue passenger miles bears to the total revenue passenger miles. The numerator of the ratio shall be computed by multiplying the number of revenue-producing passengers carried on flights landing or taking off within this state by the number of miles flown over the state by such flights. The denominator shall be determined by multiplying the total number of revenue-producing passengers carried by the total number of miles flown by flights carrying revenue-producing passengers.

2. CARGO TRAFFIC INCOME. Business income from cargo traffic and other classes of traffic shall be apportioned to this state in the ratio that Mississippi revenue ton miles, or other units of cargo transported, multiplied by Mississippi miles flown bears to the total of such elements of the factor. The numerator of each of such ratios shall be computed by multiplying the number of revenue-producing tons, or other units of cargo carried on flights landing or taking off within this state by the number of miles flown over this state by such flights. The denominator of each of such ratios shall be determined by multiplying the total number of revenue-producing tons, or other units of cargo carried, by total number of miles flown by flights carrying such revenue-producing cargo.
3. ALTERNATIVES BASIS. Business income of an airline company, or business income from any class of traffic of an airline company, may, as an alternative to the requirements of the paragraphs above, be apportioned to this state in the ratio that Mississippi flight miles bears to total flight miles during the tax year. The numerator of such alternative ratio shall be computed by multiplying the number of miles flown over this state by such flights. The denominator shall be determined by multiplying the total number of revenue-producing flights by the total number of miles flown by such flights.
4. In all of the apportionment formulas above, mileage from states here the taxpayer is not "doing business" will not be included in the apportionment formula.

402.04 Business Income of Motor Carriers. If a motor carrier picks up, delivers, services equipment, or has any activity other than simply passing through this state, then it is "doing business" in this state and is required to file a return. The net business income of motor carriers which has not been directly assigned, allocated or excluded as provided by this Regulation shall be apportioned to this state as provided in this section.

1. PASSENGER TRANSPORTATION. Business income from the transportation of passengers shall be apportioned to this state in the ratio that Mississippi revenue passenger miles bears to the total revenue passenger miles of the taxpayer during the tax period.
2. FREIGHT TRANSPORTATION. Business income from the transportation of freight or cargo shall be apportioned to this state in the ratio that Mississippi revenue ton miles to the total revenue ton miles of the taxpayer during the tax period.
3. PASSENGER-FREIGHT TRANSPORTATION. Business income of taxpayers engaged in the transportation of both passengers and freight shall first make a breakdown of the business income between passenger traffic and freight traffic by using the several ratios between gross revenue from each class of traffic and the total gross operating revenues. Business income from each class or traffic shall then be apportioned to this state in accordance with the two paragraphs above.
4. ALTERNATIVE BASIS. Business income of a motor carrier, or business income from any class of traffic of a motor carrier, may as an alternative to the requirements of the paragraph above, be apportioned to this state (A) in the ratio that Mississippi vehicle miles bears to total vehicle miles of the taxpayer during the tax period, or (B) in the ratio that gross receipts from trips beginning, ending, or passing through Mississippi bears to the total gross receipts.

5. In all of the apportionment formulas above, mileage from states where the taxpayer is not "doing business" will not be included in the apportionment formula.

402.05 Business Income of Certain Utilities. The net business income of taxpayers operating a railroad, express service, telephone or telegraph business, or other form of public service, other than public service companies specifically provided for elsewhere in this Regulation, which has not been directed to this state as provided by this Section.

1. FORMULA. Business income of public utilities shall be apportioned to this state in the ratio that gross operating revenues within Mississippi during the tax year bears to total gross operating revenues everywhere by the taxpayer during the tax year.
2. GROSS OPERATING REVENUE WITHIN MISSISSIPPI. The term **"gross operating revenue within Mississippi"** means an equal mileage portion of revenue such as ton miles, passenger miles, message miles, and the like as received for interstate business from activity in this state whether such business originates, ends, or passes through Mississippi to this result, there shall be added the Mississippi portions of all intrastate revenue.
3. ALTERNATIVE. In cases where the amounts of gross operating revenues within this state cannot be accurately and adequately determined, the Commissioner may prescribe a method for otherwise apportioning business income in Mississippi. Only methods provided in this regulation may be used without the prior approval of the Commissioner.

402.06 Business Income of Retailers, Wholesalers, Service Companies and Lessors. The net business income of retailers, wholesalers, lessors and other service companies, merchants, traders, vendors, or dealers buying, selling or renting, other than those specifically provided for elsewhere in this Regulation, which has not been allocated, directly assigned, or excluded as otherwise provided, shall be apportioned to Mississippi by multiplying such net business income by a single sales-factor apportionment formula as defined in subsection 402.09 paragraph 3 of this Regulation.

402.07 Business Income of Pipelines. The net business income of a pipeline company which has not been allocated, directly assigned, or excluded as otherwise provided in this Regulation shall be apportioned to Mississippi by multiplying such net business income by a fraction, the numerator of which is the property factor plus the payroll factor, as defined in subsection 402.09, paragraphs 1 and 2 of this Regulation, plus the traffic miles factor, and the denominator where is three (3).

1. TRAFFIC MILES FACTOR. The term "**traffic miles**" means the movement or transportation of one barrel of oil, one gallon of gasoline, or one thousand cubic feet of natural or casinghead gas for a distance of one mile. In cases where MCF mileage units cannot be determined, then capacity mileage of the pipeline in Mississippi to total capacity mileage everywhere shall be used. Capacity mileage shall be determined by squaring one-half (½) of the diameter of each size of pipe and multiplying by the mileage of that size of pipe with a total computation for each in Mississippi as compared to the total of such computations everywhere.
2. PIPELINE COMPANY DEFINED. A pipeline company means any taxpayer engaged in the trade or business of moving, conveying or transporting through a system or conduit of pipes any crude oil, natural gas, refined petroleum products,

minerals or any other mineral products to a point of delivery either in, out or through Mississippi, and irrespective of whether such products of goods belong to the taxpayer or to others. The term includes transmission lines and connecting field and storage lines.

402.08 Business Income of Manufacturers

1. MANUFACTURERS SELLING PRINCIPALLY AT WHOLESALE. The net business income of a taxpayer, engaged in the trade or business of manufacturing and selling principally at wholesale, which has not been allocated, directly assigned, or excluded as otherwise provided in this Regulation shall be apportioned to Mississippi by multiplying such net business income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, as defined subsection 402.09, paragraphs 1 and 2, and (c) of this Regulation, and the denominator of which is three (3).
2. MANUFACTURERS SELLING PRINCIPALLY AT RETAIL. The net business income of a taxpayer, engaged in the trade or business of manufacturing and selling principally at retail, which has not been allocated, directly assigned, or excluded as otherwise provided in this Regulation shall be apportioned to Mississippi by multiplying such net business income by a fraction, the numerator of which is the average of the sum of property and payroll factors plus the sales factor, as defined in subsection 402.09, paragraphs 1 and 2 of this Regulation, and the denominator of which is two (2).

402.09 Apportionment Factors

1. Property Factor Defined.
   a. Except as otherwise provided, the property factor of the apportionment formula for each trade or business of the taxpayer shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of such trade or business. The term **"real and tangible personal property"** includes land, buildings, machinery, stock of goods, equipment, and other real and tangible personal property, but does not include such properties owned or rented and used for general and administrative functions, transportation equipment (automobiles, trucks, and trailers, aircraft and other mobile equipment), coin or currency, or properties used in the production of non-business or exempt income. The includable property in the property factor shall include the average net book value of property owned, plus the value of rented property computed as provided in the "valuation of rental property" portion of this section of the Regulation.
   b. PROPERTY USED IN THE PRODUCTION OF BUSINESS INCOME. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer unless expressly excluded. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. Property or equipment under construction during the tax period (except inventoriable goods in

process) shall be excluded from the factor until such property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as conversion to the production of non-business income, its sale or its abandonment.

c. NUMERATOR. The numerator of the property factor shall include rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of his property factor in accordance with his regular accounting practices shall be included in the numerator according to the state of destination. The value of transportation equipment such as automobiles, trucks and trailers, aircraft, etc. shall be excluded completely from the property factor.

d. DENOMINATOR. The denominator of the property factor is the total of such property described in the above three paragraphs wherever located during the tax year.

e. VALUATION OF OWNED PROPERTY.

   i. Property owned by the taxpayer shall be valued at net book value. As a general rule **"net book value**" is deemed to be the original cost of the property less the depreciation as reflected on the books of the taxpayer and includes the net book value of subsequent capital additions or improvements to the includable property as well as adjustment or partial disposition thereof, by reason of sale, exchange, abandonment, etc.

   ii. Inventory of stock of goods shall be included in the factor in accordance with the valuation method acceptable for federal income tax purposes and used by the taxpayer for book purposes.

   iii. Property acquired by gift or inheritance shall be included in the factor as its net book value as reflected on the books of the taxpayer.

f. VALUATION OF RENTED PROPERTY. Property rented by the taxpayer is valued at eight times the net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer.

g. SUBRENTALS. Subrents are not deducted when subrents constitute business income because the property which produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income.

h. ANNUAL RENTALS. **"Annual rental rate"** is the amount paid as rental for property for a 12-month period. Where property is rented for less than a

12-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. Where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than twelve months, the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis. Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the used of the property. Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the net book value of leasehold improvements shall be excluded in the factor.

i. AVERAGING PROPERTY. As a general rule the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the Commissioner may require or allow averaging by monthly values, or other periodic values, if such method of averaging is required to property reflect the average values of the taxpayer's property for the tax period. Averaging by monthly values, or other periodic values, will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period. Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property.

2. Payroll Factor Defined**.** Except as otherwise provided, the payroll factor of the apportionment formula for each trade or business of the taxpayer shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period. There shall be excluded from the payroll factor amounts paid as compensation for general and administrative functions and amounts paid for the production of non-business or exempt income.

a. PAID. The total amount **"paid"** to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under such method for unemployment compensation purposes.

b. COMPENSATION. The term **"compensation"** means wages, salaries, commissions and other form of remuneration paid to employees for personal services. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits, or services furnished to employees by the taxpayer in return for personal services, provided that such amounts constitute income to the recipient under the Federal Internal

Revenue Code. Payments made to an independent contractor or any other person for personal services rendered for the taxpayer may, with the approval or requirement of the Commission, be classified as compensation.

c. EMPLOYEES. Except as otherwise provided, the term **"employee"** means any officer of a corporation, or any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act.

d. NUMERATOR. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation.

e. DENOMINATOR. The denominator of the payroll factor is the total compensation paid everywhere during the tax period.

f. Compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, are met:

   i. The employee's service is performed entirely within this state.

   ii. The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee' s service within the state. The word **"incidental"** means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

g. If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

   i. If the employee's base of operations is in the state; or

   ii. If there is no base of operations in any instance in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

   iii. If the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

h. The term **"base of operations"** is the place of more or less permanent nature from which the employee starts his work and to which customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of this trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

3. Sales Factor Defined.

a. For the purpose of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term **"sales"** means all gross receipts derived by the taxpayer from transactions and activity in the regular course of such trade or business during the tax period which have not been directly assigned, allocated or excluded as provided in this Regulation. The following are rules for determining "sales" in various situations:

i. In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, **"sales"** includes all gross receipts from the sales of such goods or products held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances, and includes interest income, service charges, carrying charges, or time-priced differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

ii. In the case of cost plus fixed fee sales or service contracts, **"sales"** include the entire reimbursed cost, plus the fee.

iii. In the case of a taxpayer engaged in providing services, **"sales"** includes the gross receipts from the performances of such services including fees, commissions, and similar items.

iv. In the case of a taxpayer engaged in renting real and tangible property **"sales"** includes the gross receipts from the rental, lease, or licensing the use of the property.

v. In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, **"sales"** include the gross receipts therefrom.

vi. In the case of business income derived from interest and dividends, such receipts constitute **"sales"**.

vii. In the case of business income derived from the sale of capital assets (sale of equipment used in business, sales of stocks, bonds, etc.), such receipts constitute **"sales"** but only to the extent of the gain realized from such sales.

b. SALES OF TANGIBLE PERSONAL PROPERTY ARE IN THIS STATE. Gross receipts from sales of tangible personal property (except sale to the United States Government) are in this state:

i. If the property is delivered or shipped to a purchase, within this state regardless of the f. o. b. point or other conditions of sale, or

ii. If the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

iii. Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

iv. Property is delivered or shipped to a purchaser within the state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

v. The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of purchases, delivers to or has the property shipped to the ultimate recipient within this state.

vi. When the property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

vii. If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

viii. If a taxpayer, whose salesman operates from an office located in this state, makes a sale to a purchaser in another state in which the taxpayer is not taxable, and the property shipped directly by a third party to the purchaser, the following rules apply:

- If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in such state.
- If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in this state.

c. SALES OF TANGIBLE PERSONAL PROPERTY TO THE UNITED STATES GOVERNMENT ARE IN THIS STATE. Gross receipts from the sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For purposes of this Regulation, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States Government. Thus, as a general rule, sales by a subcontractor to the prime contractor (the prime contractor being party to the contract with the United States Government) do not constitute sales to the United States Government.

d. SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY ARE IN THIS STATE. SECTION 27-7-23(c)(3) provides for the inclusion in the numerator of the sales factor, gross receipts from transactions other than sales of tangible personal property (including transactions with the United States Government). Under this section gross receipts are attributed to this state if the income-producing activity is performed wholly within this state. Gross receipts, with respect to a particular item of income, derived from income-producing activity performed within and without this state shall be attributed to this state to the extent of such gross receipts which represent services or activities actually performed within this state.

e. INCOME-PRODUCING ACTIVITY DEFINED. The term **"income-producing activity"** applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in

the regular course of its trade or business for the ultimate purpose of obtaining gains or profits. Accordingly, the income-producing activity includes but is not limited to the following:

i. The rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service.

ii. The performance, execution or subletting of a construction contract by the taxpayer to whom a construction contract has been awarded.

iii. The sale, rental, leasing, or licensing or other use of real property.

iv. The rental, leasing, licensing or other use of tangible personal property.

v. The sale, licensing or otherwise of intangible personal property.

f. SPECIFIC APPLICATIONS. The following are special rules for determining when receipts from income-producing activities described below are in this state:

i. Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.

ii. Gross receipts from the rental, lease or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income-producing activity from the rental, lease, licensing or other use of the same property while located in another state; consequently, if property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by a ratio of the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during such period.

iii. Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state. Usually where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income-producing activity; in such case the gross receipts for the performance of services attributable to this state shall be measured by a ratio of the time spent in performing such services in this state bears to the total time spent in performing services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which produced such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computation.

iv. In the case of a construction contract performed partly within and partly without this state, gross receipts attributable to this state shall be the amount of the construction contract allocable to Mississippi for Mississippi sales tax purposes.

g. NUMERATOR. The numerator of the sales factor shall include the gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to such gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

h. DENOMINATOR. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts directly assigned, allocated or excluded by the provision of this Regulation.

i. UNIFORMITY. It is the purpose and intent of this Regulation to include in both the numerator and denominator of the factors described in the above sections only those properties, payrolls and sales which are comparable.

402.10 Other Provisions. If the allocation and apportionment provisions of this Regulation do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the Commissioner may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

1 Separate accounting;

2. The exclusion of any one of the factors;

3. The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

4. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

403 (Reserved)

500 (Reserved)

600 (Reserved)

Chapter 07 Consolidated or Combined Returns

100 <u>Taxpayer Election to File Consolidated or Combined Returns</u>

1. Two or more members of an affiliated group of corporations may elect to file a consolidated income tax return when all the business activities of the group of affiliated corporations included in the consolidated return are conducted in, and are taxable solely in, Mississippi. In determining whether the business activities of the group are conducted in and are taxable in more than one state, the test of "taxable in another state" as provided and defined in the Multistate Regulation, will apply.

2. Two or more members of an affiliated group of corporations taxable in Mississippi and where one or more are taxable in another state, as provided in the Multistate Regulation, may elect to file a combined income tax return, as follows:

a. Net income (or loss) of each member of the affiliated group included in the combined return shall be computed on an individual corporate member basis.

b. Mississippi taxable income for each member included in the combined return shall be determined in accordance with the provisions of the Multistate Regulation. The formula prescribed in, or the direct accounting procedures prescribed in such regulation, shall be applied to each member on an individual corporate basis to determine net business income apportioned or directly assigned to Mississippi. To that amount shall be added non-business income allocated or apportioned to Mississippi by each member. The results from each member's computation shall then be combined to determine the taxable income of the affiliated group.

101 Commissioner's Authority to Require Filing of Combined or Consolidated Return.

1. The Commissioner may require any or all members of a group of affiliated corporations, whether or not subject to the tax jurisdiction of this state, to file a combined or consolidated Mississippi income tax return if he believes such combined or consolidated return is necessary to clearly and equitably reflect the Mississippi taxable income of the affiliated group, or included member or members thereof, subject to the following conditions:

a. The net business income (or loss) of each member required to be included in the combined income tax return shall be determined on an individual corporate member basis. The net business income (or loss) so computed for each member shall be combined to determine the net business income (or loss) of the affiliated group of corporations. The combined net business income (or loss) shall then be apportioned by use of formulas prescribed and set forth in the Multistate Regulation to determine the amount of net business income apportioned to Mississippi. The apportionment formula provided in the Multistate Regulation shall then be the consolidated elements or components of the required factors for the affiliated group.

b. To the amount determined in (a) above shall be added the combined net profit (or loss) from non-business income of the affiliated group allocated or apportioned to Mississippi to determine the total Mississippi taxable income.

2. However, if the combined income under paragraph one (1) of this section does not clearly reflect Mississippi income then the Commissioner may require consolidated returns of any of the corporations that are members of the affiliated group that would be necessary to clearly and equitably reflect the Mississippi income of the affiliated group.

102 In General.

1. The term "affiliated group" means one or more corporations connected through stock ownership with a common parent corporation where at least eighty percent (80%) of the voting power of all classes of stock and at least eighty percent (80%) of each class of the nonvoting stock of each of the member corporations, except the common parent corporation, is directly owned by one or more of the other

member corporations; and the common parent corporation directly owns stock possessing at least eighty percent (80%) of the voting power of all classes of stock and at least eighty percent (80%) of each class of the nonvoting stock of at least one (1) of the other member corporations. As used in this Regulation, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

2. When an affiliated group of corporations is eligible to and elects, or is required to file returns on a combined or consolidated basis, all subsequent returns shall be made upon the same basis unless permission to change the basis is granted by the Commissioner, or unless the Commissioner requires a change in the basis. If a consolidated or combined return is filed, all members of the affiliated group who are "doing business" in Mississippi must be included in the return. If the affiliated group filed separate returns, they cannot amend their returns and file a consolidated or combined return unless such return was filed in the previous year. An election will be considered exercised by the filing of an annual income tax return reflecting consolidated reporting therein.
3. The consolidated or combined return of eligible and included members of an affiliated group relates only to its consolidated or combined income tax liability. Liability for applicable franchise taxes, annual reports of corporations, withholding taxes and other payroll, privilege and other excise taxes may not be computed on a consolidated or combined return basis. A separate report, return or schedule, as otherwise required by Mississippi Law, shall be filed by each applicable individual member of the affiliated group. In the case of franchise taxes and the annual reports of corporations, a separate schedule is required for each member of the affiliated group subject to the measure of the franchise tax and subject to the requirement of filing an annual report of corporations.
4. An includable corporation for the purpose of filing a consolidated or combined income tax return, within the limitations imposed by Mississippi Law, is any eligible corporation except corporations exempt under Section 27-7-29(a), Mississippi Code of 1972. Mississippi has not adopted Federal tax treatment of a Domestic International Sales Corporation (DISC) and a DISC is treated under Mississippi Law as an ordinary corporate entity; therefore, a DISC is an eligible corporation for consolidated or combined return purposes where such entity is a member of an affiliated group of corporations. S Corporations having an election in effect under Section 27-7-29(b) which choose to have their corporate income taxed directly to shareholders lose their status of S Corporations if they become members of an affiliated group electing to file a consolidated or combined return.
5. Each member of the affiliated group is severally liable for the tax on a consolidated or combined return and for any subsequently determined deficiency thereon. No intercompany agreement can change this rule.
6. There shall be attached to the consolidated return supporting schedules in columnar form to show separately and in combination, the profit and loss statement, balance sheet, analysis of unappropriated retained earnings and reconciliation of book income to income per return of each affiliated corporate member included in the elected combination.

7. The consolidated or combined return of an affiliated group must be filed on the basis of the common parent's taxable year and each subsidiary must adopt the common parent's annual accounting period for the first consolidated or combined return year for which the subsidiary's income is includable in the consolidated or combined return.

102.01 If no parent-subsidiary relationship exists, the consolidated or combined return will be determined using the income year of the affiliated corporation member expecting to have, on a recurring basis, the largest amount of Mississippi net taxable income.

102.02 Generally, a newly organized affiliated corporate member will be, if eligible, included within the group filing the consolidated return in the year organized.

102.03 A newly acquired corporate member will also be eligible to be included in the combined return; but loss carryovers incurred prior to the time that the corporation became a member of the affiliated group can only offset income in that newly acquired corporation's future returns. Those losses will not be allowed to offset income of the other affiliated corporations.

103 (Reserved)

104 (Reserved)

Chapter 08 Interest Expense

100 Section 27-7-9(j)(6) requires that if a corporation or other legal entity enters into any transaction that is for the benefit of its shareholders or for the benefit of an affiliated corporation without an equal mutual business benefit to the corporation, the transaction will be adjusted or eliminated. Interest expense incurred for the purchase of its own stock, whether the corporation retires this stock or not, or for leveraged buyouts are not for the benefit of the corporation and may not be taken as an expense of the corporation.

101 Section 27-7-17 provides that an interest expense deduction will be denied or limited in the case of a parent that makes a loan to a subsidiary which is not business related. Subsidiaries that are undercapitalized and borrow money from a parent corporation or other corporation of an affiliated group may not deduct any interest on these loans. Corporations that borrow funds from affiliated corporations for working capital and have been paying dividends instead of retaining an amount of funds sufficient to maintain operations will be allowed to deduct interest only on an amount equivalent to the borrowed funds less dividends paid. Amounts of interest on borrowed funds used to pay dividends will not be allowed as a deductible expense of the corporation.

102 (Reserved)

103 (Reserved)

Subpart 09 Partnerships

Chapter 01 Partnerships

100 Definition

For purposes of this regulation, the term **"partnership"** includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not within the meaning of this title, a corporation or a trust or estate.

101 Return

1. Every partnership, domestic or foreign, deriving income from property owned within the State of Mississippi, or business, trade, profession or occupation, carried on within the State shall make a return for each taxable year. The return shall include the names, addresses and social security numbers or identification numbers of all partners who are entitled to share in the partnership net income. The return shall be signed by any one of the partners and shall be filed on prescribed forms with the Commissioner on or before the due date as provided by statute.
2. The individual partners are subject to tax upon their distributive share of the partnership net income, whether distributed to them or not. The partnership net income shall be computed in the same manner and on the same basis as the net income of an individual, except that the deduction for contributions or gifts is not allowed. These deductions are allowed to the partners in their individual return.
3. Where the result of partnership operation is a net loss, the loss will be divisible by the partners in the same proportion as net income would have been divided (unless the partnership agreement provides otherwise) and may be taken by the partners in their return. The amount of partnership loss that may be allowed to a partner is limited to the amount of the adjusted basis of this interest in the partnership at the end of the partnership taxable year in which the loss occurred.
4. Payments made to a partner for services rendered and for interest on capital contributions are not deductible in computing the net income of the partnership, such payments being held to represent a division of partner profits.

102 Nonresident Partner

A nonresident individual, who is a member of a partnership owning property or doing business in the State of Mississippi, is subject to tax on his share of the partnership net income, whether distributed or not. If the partnership does business both within and without the state, it will be necessary to compute the income (or loss) of the partnership from sources within the state separately from the other income in order to determine the amount of income taxable to (or the amount of the loss deductible by) the nonresident partners. The nonresident partner is subject to tax only on such share of his income, whether or not distributed, as is assignable to Mississippi.

103 Liability of Partnership

1. The partnership and general partners shall be jointly and severally liable for any tax not paid by the partners. Each partner in a partnership, whether general or limited,

resident or nonresident, is responsible for paying tax on his share of the net gain or profit from the partnership. If the collection of such tax might not be otherwise reported by the partners, the Commissioner shall require the partnership or the general partners to remit the tax.

2. However, the partnership may withhold five percent (5%) of the net gain or profit of the partnership and remit to the Commissioner. The remittance shall be deemed estimated payments of the partners and shall be allocated pro rata to the partners estimated tax account and would be available for refund to the partner if his individual return indicates his tax liability to be less than the five percent (5%) withheld.
3. A partnership that elects to withhold the five percent (5%) should file the prescribed form with the Commissioner and remit the tax. This form shall be filed by the due date of the partnership return and a copy shall be provided to the partners after the form is submitted to the Commissioner.
4. A partnership that has income from sources within and without Mississippi should withhold from Mississippi source income only.

104 Composite Returns

1. A partnership is allowed to file a composite return on behalf of its partners in very limited circumstances. A composite return is a return in which a partnership pays the income tax due for some, or all, of its partners. The only partners who are eligible to be included in the composite return are nonresident partners without any activity in Mississippi other than that from the partnership.
2. Resident partners and nonresident partners with other activity in Mississippi cannot be included in a composite return. Each of these partners must file his own return.
3. If a composite return is filed, the partnership return is completed like any other partnership return, but an additional schedule is attached listing the partners, the partner's identification or social security number, and the partner's distribution that is to be included in the composite return. The partnership then files a nonresident individual return under the partnership name and identification number in which it includes the composite income.
4. The partnership is allowed to deduct 10% of adjusted gross income not to exceed $5,000 per composite return on the income that relates to individuals as the amount for personal exemptions or standard deductions.
5. Once a partnership begins filing a composite return, it must continue unless permission to change is granted in writing by the Commissioner.

105 Tax Years

If the taxable year of a partner is different from that of the partnership, the share of the partnership income to be reported by that partner is based upon the income of the partnership for any taxable year of the partnership ending with or within the partner's taxable year.

106 (Reserved)

107 (Reserved)

Subpart 10 Other Entities and Miscellaneous

Chapter 01 Fiduciaries

100 **Fiduciary** means a guardian, trustee, executor, administrator, receiver, conservator or any person, whether individual or corporate, acting not for his own benefit, but for the benefit of another, as to whom he stands in a relation necessitating great confidence and trust, and a high degree of good faith, or acting in any fiduciary capacity for any person, trust or estate.

101 Returns by Fiduciaries. All legal fiduciaries must file a fiduciary return unless the gross income does not exceed the allowable exemption, or unless there is a specific exception in the regulations. A fiduciary who is the guardian of a minor or incompetent, and where no legal trust or estate has been established, is an exception and is not required to file a return.

102 Returns by Fiduciaries as Agent. Every fiduciary, or at least one of joint fiduciaries (except receivers appointed by authority of law, in possession of part only of the property of the taxpayer) is required to make a return, or returns, of income for the individual (decedent, minor or incompetent) whose entire income from whatever source derived is in his charge, if the gross income of such individual exceeds the exemption plus the standard deduction to which such individual may be entitled.

103 Fiduciary Distinguished from Agent. There may be a fiduciary relationship between an agent and a principal, but the word "agent" does not denote a fiduciary. A fiduciary relationship cannot be created by a power of attorney. An agent having entire charge of property, with authority to effect and execute leases with tenants entirely on his own responsibility and without consulting his principal, merely turning over the net profits from the property periodically to his principal by virtue of authority conferred upon him by a power of attorney, is not a fiduciary within the meaning of the statute. In cases where no legal trust has been created in the estate controlled by the agent and attorney, the liability to make a return rests with the principal.

104 Minors. A minor is taxable on his wages, on the income he receives from the property he owns, and on income from funds held in trust for him. If the gross income of a minor is in excess of the exemption provided for under the Income Tax Act of 1952, he must file a return. On his return, the minor is entitled to his own deductions and exemptions, like any other taxpayer. All expenditures by the parent of the child attributable to amounts which are includable in the gross income of the child (and not of the parents) shall be treated as paid or incurred by the child. If a minor's income tax is not paid, an assessment made against the minor will be treated as if it were made directly against the minor's parent or guardian.

105 Guardians. A guardian, whether of an infant or other person, is a fiduciary, and as such is required to make and file the return for his ward and pay the tax. Such a fiduciary is subject

to all the provisions of this law which apply to individuals, including the allowance of personal exemptions and credits.

106 Decedents. The net income of deceased individuals who, at the time of death, were residents and who died during the taxable year or subsequent thereto without having made a return shall be taxed at the rates and in the same manner as living persons. A return for any year or period for which no return has been filed by the decedent prior to his death shall be made and filed by the executor or administrator of the estate of such decedent or the person or persons having charge of the properties of such decedent.

107 Devises, for income tax purposes, must report the income derived from the realty devised to them for all taxable periods subsequent to the testator's death, except in cases where a trustee or conservator is duly appointed to take possession of the realty pending the outcome of a judicial proceeding or action. In such case, the income from the realty would be properly taxable, pending the contest, to the fiduciary as the income of property held in trust under the provisions of the act.

108 A bequest is a gift by will of personal property. A devise is a gift of real property by the last will and testament of the donor. A bequest or devise received by a legatee under the provisions of a will or by an heir in accordance with the statutes of descent and distribution is tax exempt, but not the income thereof.

109 The income tax imposed upon individuals shall be applicable to the income of estates or of any kind of property held in trust as well as the net income received during the taxable year by deceased individuals who, at the time of death, were residents and who have died during the taxable year or subsequent thereto without having made a return, and the net income of resident insolvent or incompetent individuals where the fiduciary has complete charge of such net income. The rate of tax, the statutory provisions respecting gross income, and, with certain exceptions, the deductions, exemptions and credits allowed to individuals apply also to estates and trusts.

110 The provisions of this regulation relating to estates and trusts, fiduciaries and beneficiaries contemplate that the corpus of a trust, or the income therefrom is, within the meaning of the act, no longer to be regarded as that of the grantor. If, by virtue of the nature and purpose of the trust, the corpus or income therefrom remains attributable to the grantor, these provisions do not apply.

111 In general, the income of an estate or trust for the taxable year which is currently distributed to the respective beneficiaries must be returned by and will be taxed to the beneficiaries, but the income of a trust which is to be accumulated or held for future distribution, whether consisting of ordinary income or gain from the sale of assets included in the corpus of the trusts, must be returned by and will be taxed to the fiduciary. However, regardless of whether or not the income is taxable to the fiduciary or to the distributee, the fiduciary is responsible for reporting all income, allocation of the tax being affected by permitting the fiduciary, under certain circumstances, to show as a deduction the amounts credited or paid to the distributee.

112 Income to Fiduciary. Generally, the gross income of an estate or trust is determined in the same manner as that of an individual. Gross income of an estate or trust includes all items of gross income received during the taxable year, including:

1. Income accumulated in trust for the benefit of unborn or unascertained person or persons with contingent interest, and income accumulated or held for future distribution under the terms of the will or trust. This income is taxed to the fiduciary.
2. Income which is distributed currently by the fiduciary to the beneficiaries, and income collected by the guardian of an infant which is to be distributed as the court may direct. This income is usually deductible by the fiduciary and is taxed to the beneficiary. (See deductions for fiduciaries.)
3. Income received by the estate of a deceased person during the period of administration or settlement of the estate. This income may be taxed to the fiduciary or to the beneficiary, depending upon the amounts which are properly paid or credited to the beneficiary. (See deductions for fiduciaries.)
4. Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated. This income may be taxed to the fiduciary or to the beneficiary, depending upon the amounts which are properly paid or credited to the beneficiary. (See deductions for fiduciaries.)

113 Exemptions of Fiduciaries. The personal exemptions allowed to fiduciaries are as follows:

1. Estates. In the case of an estate, a specific exemption of six hundred dollars ($600.00).
2. Trusts. In the case of a trust which, under its governing instrument, is required to distribute all of its income currently, a specific exemption of three hundred dollars ($300.00). In the case of all other trusts, a specific exemption of one hundred dollars ($100.00).

114 Deductions for Fiduciaries. A standard deduction of $1700 is allowed to fiduciaries in lieu of itemized fiduciary expense. In addition to the deductions authorized for individuals, the following will be allowed:

1. Income which is currently paid or credited to a beneficiary by a fiduciary is deductible on the fiduciary's return. This deduction will be disallowed if the beneficiary does not report this income, if so required.

2 a. Reasonable amounts paid or incurred by a fiduciary on account of administration, including fiduciaries' fees and expenses of litigation, are deductible, even though the estate or trust might not be engaged in a trade or business, unless the expenses were for the production or collection of tax-exempt income or were claimed as a deductible administration expense or loss on an estate tax return for Mississippi estate tax purposes.

b. Amounts deductible as administration expenses or losses for estate tax purposes are not deductible by the estate for income tax purposes unless the estate files a statement (in duplicate) to the effect that the items have not been allowed as deductions for estate tax purposes and that all rights to deduct them for such purposes are waived.

3. Estate Tax Deduction. An estate may be entitled to claim the estate tax deduction if the estate must include in gross income for any tax year an amount of income in respect to a decedent. The estate tax deduction is computed based on the Mississippi estate tax attributable to the net value of all the items included in the estate that represent income in respect of the decedent, less adjustment for distribution of this income to beneficiaries.

115 Income Taxable to Beneficiaries. Any amount described in this regulation as being deductible from the gross income of the estate or trust shall be included in computing the net income of the legatees, heirs or beneficiaries, except in the case of income distributed to nonresidents of this state from investments in intangibles (dividends, interest etc.) having a situs in Mississippi in which case such amounts may be excluded. Income from other sources distributed to nonresidents shall be included in gross income and reflected in the return filed by such nonresident with this state.

116 (Reserved)

117 (Reserved)

Chapter 02 Decedent's and Successor's Income

100 The final return of a taxpayer shall be computed on the same method of accounting (cash or accrual) used by the decedent in the last income tax return filed by him with the State of Mississippi within the three years immediately preceding the date of his death.

1. Inclusions in Gross Income of Decedent. The amount of all items of gross income of a decedent which are not properly includible in the taxable period in which his death occurred or a prior period, shall be included in gross income for the taxable year received by:
   a. The estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;
   b. The person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or,
   c. The person who acquires from the decedent the right to receive the amount by bequest, devises or inheritance, if the amount is received after a distribution by the decedent's estate of such right.
2. Installment Obligations. If the decedent at the time of his death possessed installment obligations which were being reported on the installment basis, the unreported income on such obligations may be reported by the decedent's estate on the same basis used by the decedent prior to his death or they may be reported and included in the decedent's final return.
3. Three Years Failure to File. If a deceased taxpayer has not filed a return with the State of Mississippi within the three years immediately preceding the date of death, the Commissioner may require that the return be filed on the cash basis.

4. Nonresident Successor. If any successor of a decedent is not a resident of this state, he is considered for the purposes of this section a nonresident with income subject to tax in this state.

101 (Reserved)

102 (Reserved)

Chapter 03 Insurance Companies

100 GROSS INCOME:

1. Gross receipts or gross income of all insurance companies, including mutuals, reciprocals, and all types of insurance companies or associations, of whatever nature or by whatever term designated, shall include premiums, reinsurance premiums, considerations for annuities and supplementary contracts, interest including interest income on mortgage loans secured by real estate located in Mississippi, rent, dividends, and all other income, regardless of character or designation, unless otherwise exempted or provided for, under the provisions of the act. Gross income shall be computed on an accrual basis unless, because of taxpayer's accounting system, a more accurate computation can be made on a receipts basis.
2. If reserve funds maintained for the purpose of liquidating policies and contracts at maturity or on surrender are transferred to surplus, the portion, so transferred that has been taken as a deduction from Mississippi gross income in the current year or prior years shall be included in Mississippi gross income for the year in which such transfer is made.
3. Code Section 27-7-15(4)(g), provides for the exclusion of gross income received by domestic corporations taxable in another state, and derived from business activity conducted outside this state. The Commissioner has construed the provision as permitting a domestic company to exclude only direct premiums and insurance considerations derived from other taxable states and jurisdictions when such income is earned through the operation of a bona fide office, agency or place of business without the State of Mississippi. When a company excludes income, it must exclude all expenses incurred in earning that income, including retaliatory premium taxes. All reinsurance assumed premiums of a domestic company and all other income must be included in Mississippi income, unless earned from sources without the state as defined in the statute.
4. Mississippi gross income from foreign insurance companies shall include all direct premiums and considerations derived from within this state as shown by the company's annual statement, and all reinsurance assumed premiums received from Mississippi companies. There also shall be included the income from intangible property including interest income on mortgage loans secured by real estate located in Mississippi, if the evidence of ownership has acquired a business, commercial or actual situs in this state; rentals or royalties from property or any interest in property within the state, and income from the operation, ownership or sale of any property within this state.

5. Life insurance companies must report their income under the direct accounting method. Other insurance companies in lieu of the direct accounting method may determine their Mississippi net income from underwriting by apportioning to this state a part of their total net underwriting income. Companies electing to use the apportionment method should compute their Mississippi net income in the following manner:
   a. From a company-wide net underwriting gain, as shown by the company's annual statement, deduct policy dividends, which qualify as a deduction.
   b. Apply to the remainder so computed, the ratio between Mississippi net premiums written and company-wide net premiums written.
   c. To the Mississippi net income thus apportioned add the net income from intangible property if the evidence of ownership has acquired a business, commercial or actual situs in this state; the net rental and royalty income from property or any interest in property within this state; and net income from the operation, ownership or sale of any property within this state.
   d. Deduct from the total so computed any net losses from the rental, lease, operation, ownership or sale of any property within this state.
   e. Add or deduct other income or other losses, which are not specific to any state, in the ratio of Mississippi net premiums written to company- wide net premiums written.
6. Once the apportionment method of reporting is elected, it must follow for subsequent years unless permission is granted by the Commissioner to change to the direct accounting method. One of a group of affiliated companies may use the apportioned method of reporting only if all the non-life companies of the same group use said method.

101 DEDUCTIONS:

1. Insurance companies may deduct from gross income the deductions provided by statute on the same basis and the same measure as other corporations. Deductions shall be computed on an incurred basis except that, where taxpayer reports income on a receipts basis, deductions must be computed on a paid basis.
2. Amounts representing rebates, return premiums and premiums on policies not taken may be deducted from income when such amounts have been included in income in the current year or prior years. Dividends (other than dividends paid to stockholders as stock dividends) or distributions which represent a return of premiums paid, or deposited, by policy holders are deductible when actually paid to policy holders, or are definitely and irrevocably placed to the credit of policy holders subject to withdrawal on demand; or treated and consummated as a reduction of premiums due from policy holders. Dividends or distributions, which are credited to future premiums payable by policy holders, are not deductible from gross income when such dividends or distributions are not credited or paid to the prospective policy holder unless the policy is renewed. Deductible policy dividends on direct business and reinsurance assumed must be reduced by dividends on reinsurance ceded.
3. Foreign, non-life companies using the apportionment method of reporting income will determine underwriting income on a net basis. No other companies may deduct reinsurance ceded unless the assuming company is, or would be, required to report

the income therefrom under the direct accounting method. Generally, this will permit domestic companies to deduct reinsurance ceded to Mississippi companies.

4. In computing losses and claims any estimate for losses incurred but not reported during the taxable year should not be included. As payments on policies, there shall be reported all death, disability and other policy claims paid within the year on Mississippi contracts, including fire, accident and liability losses, matured endowments, annuities, payments on installment policies and surrender values actually paid. All losses and claims paid must be reduced by recoveries from reinsurance ceded, when the reinsurance premiums paid have been taken as a deduction from gross income.
5. The statute provides that there may be deducted "the net additions required by law to be made within the taxable year to reserve funds when such reserve funds are maintained for the purpose of liquidating policies at maturity." Such deductible reserve additions do not include additions to a security reserve, investment reserve or any reserve other than those reserves normally included with and recognized as a part of the true policy reserves.
6. Said additions must reflect reinsurance to the extent that same is reflected in premium income reported. Life companies which do not include in gross income the increase in deferred and uncollected premiums must reduce the net increase in reserves by the increase in net deferred and uncollected premiums.
7. When Mississippi unearned premiums cannot be accounted for specifically by companies which use the direct accounting method of reporting, said premiums shall be computed by taking the ratios on a net basis between company-wide unearned premiums and company-wide net premiums written, by line of business and applying said ratios to the premium income reported, less return premiums, by line of business.

102 OPERATING EXPENSE:

1. Insurance companies should compute their deductions for operating expenses in a manner consistent with the computations of such deductions as shown by the annual statement filed with the Commissioner of Insurance, provided that, adjustments must be made for deductions not allowable under the statute and, provided further that, accruals will be allowed only if income is reported on the accrual basis. Returns, with supporting schedules where necessary, must be reconcilable with the annual statement.
2. The method used in the annual statement in computing home office rent and furniture and equipment expense should be followed on the return. Companies having unrecovered costs in furniture and equipment, because of their departure from the annual statement in prior years, may continue charging depreciation on such items until cost has been recovered.
3. In the case of income determined by direct accounting, when an expense which is specific to Mississippi has been claimed as a direct deduction from Mississippi income, the corresponding expense for all other jurisdictions must be excluded from expenses to be apportioned. When a particular type of income is not reportable to this state because it is beyond its taxing jurisdiction, no expense incurred in earning such income shall be deducted on the return.

4. Companies reporting a part of their investment income to this state must separately apportion non-allocable expenses of the investment department by using the ratio of Mississippi investment income to company-wide investment income. A supplement should be attached to the return for this purpose.
5. Life companies and accident and health companies shall apportion to this state a part of allowable, non-allocable expenses by using the ratio between Mississippi gross premiums and annuity considerations reported and company-wide gross premiums and annuity considerations. "Gross premiums" shall mean direct writing, less return premiums, plus reinsurance assumed. The Commissioner will allow modifications of this formula when it can be shown that greater accuracy will be achieved thereby. Companies having both life and accident and health business must separately apportion expenses of each department. A supplement should be attached to the return for this purpose.
6. The following provisions of this regulation are applicable only to non-life companies determining their Mississippi income by the direct accounting method:
   a. A part of nonspecific loss adjustment expense shall be apportioned to this state by using the ratio between Mississippi direct losses and company-wide direct losses.
   b. A part of other allowable non-allocable expenses shall be apportioned to this state by using the ratio between Mississippi gross premiums reported and company-wide gross premiums. "Gross premiums" shall mean direct writings less return premiums, plus reinsurance assumed.

103 (Reserved)

104 (Reserved)

Chapter 04 Allocations by Cooperative Associations

100 Amounts allocated on the basis of the business done with or for a patron by a cooperative association in cash, merchandise, capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice or in some other manner disclosing to the patron the dollar amount allocated, shall be included in the computation of the gross income of such patron for the taxable year in which received to the extent prescribed in the following paragraph of this Regulation. The determination of the extent of taxability of such amounts is in no way dependent upon the method of accounting employed by the patron or upon the method, cash, accrual or otherwise, upon which the taxable income of such patron is computed.

101 Amounts allocated to a patron on a patronage basis by a cooperative association with respect to products marketed for such patron, or with respect to supplies, equipment or service, the cost of which was deductible by the patron, shall be included in the computation of the gross income of such patron, as ordinary income to the following extent:
1. If the allocation is in cash, the amount of cash received.
2. If the allocation is in merchandise, the amount of the fair market value of such merchandise at the time of receipt by the patron.

3. If the allocation is in the form of revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice or similar documents, the amount of the fair market value of such document at the time of its receipt by the patron.

102 Mississippi Law does not conform with Section 1381 et seq., I.R.C. with respect to the tax treatment of corporations operating on a cooperative basis. Patronage dividends, based solely on patronage and not stock ownership, actually paid or distributed to a patron by a corporation operating on a cooperative basis may be deducted by such corporation in determining Mississippi taxable income. Patronage dividends which are retained by the corporation in the form of "per-unit retain allocations" and identified on the books of the corporation as "qualified allocation margins" are not deductible by the corporation and must be included as an element of taxable income for Mississippi income tax purposes, regardless of whether or not the patron signs his or her written notice of allocation (as defined in 26 U.S.C. 1388). Such "per-unit retain allocations," taxable to the corporation, are not taxable to the patron until such allocations are, by vote of the stockholders, actually distributed, in whole or in part, to the patron. Corporations operating on a cooperative basis are not, therefore, treated as "tax-option corporations" under Mississippi Law and no authority for such presently exists.

103 Section 27-7-29(a)(7) provides that there shall be exempt from the tax imposed by this article "farmers and fruit growers cooperatives or other like organizations organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses and on the basis of the quantity of produce furnished by them, and other nonprofit agricultural associations organized and operated under the provisions of the cooperative marketing association is organized and operated as a nonprofit association within the provisions of the cooperative marketing laws of this state", such cooperative is exempt from income taxation under the Mississippi Income Tax Law. Mississippi Law does not conform with Section 1381, IRC, with respect to the levy of an income tax on nonprofit farmers cooperatives.

104 A corporation or other taxable entity not organized as a nonprofit cooperative marketing association within the scope of the cooperative marketing laws of this state is subject to taxation under the provisions of the Mississippi Income Tax Law in the same manner of any other corporation doing business within the state. Mississippi Law does not conform with Subchapter T of the Internal Revenue Code with respect to the taxation of corporations operating on a cooperative basis. The entire net income of the corporation derived from sources in Mississippi, with the exception of amounts paid in money as patronage dividends to patrons on the basis of the business done with or for such patrons, is subject to the measure of the Mississippi income tax levy. The net income of the corporation (operating on a cooperative basis) shall not be reduced by amount representing qualified written notices of allocation, nonqualified written notices of allocations, per-unit retain allocations, qualified or nonqualified per-unit retain certificates, dividends or other property. Only patronage dividends paid in cash (money) by the corporation to the patron and based solely on business done with or for such patron may be deducted in determining net taxable income of the corporation, other than, of course, ordinary and necessary trade of business expenses.

105 The patronage dividend received in cash by the patron must be included in the gross income of such patron. The patron may, however, exclude from Mississippi gross income the value of qualified written notices of allocation and qualified per-unit retain certificates to the extent that they represent non-cash items received. Dividends paid by the corporation based on stock ownership rather than patronage are not deductible by the corporation and are included in the gross income of the resident recipient.

106 (Reserved)

107 (Reserved)

Chapter 05 Exempt Organizations

100 The following organizations are exempt from taxation under the provisions of the act:

1. Fraternal beneficiary societies, orders or associations.
2. Mutual saving banks, domestic or foreign and farm loan associations when organized and operated on a nonprofit basis and for public purposes.
3. Cemetery corporations; religious, charitable, educational or scientific associations or institutions, including any community chest, funds or foundations, organized and operated exclusively for religious, charitable, scientific or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.
4. Business leagues, labor organizations, agricultural or horticultural associations, chambers of commerce, or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.
5. Civic leagues and social clubs or organizations not organized for profit, but operated exclusively for the promotion of social welfare.
6. Clubs organized and operated exclusively for pleasure, recreation and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member.
7. Farmers and fruit growers cooperatives or other like organizations organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses and on the basis of the quantity of produce furnished by them, and other nonprofit agricultural associations organized and operated under the provisions of the cooperative marketing laws of this state.
8. Nonprofit cooperative electric power associations or corporations, or like associations, when organized and operated for public purposes and when no part of the income inures to the benefit of any private stockholder or individual.

101 Corporations and organizations claiming exemption from taxation under the foregoing provisions shall be required to provide good and sufficient evidence to the Commissioner showing their right to exemption as claimed. The burden is upon the corporation or organization claiming exemption to establish same without request by the Commissioner.

In no event shall corporations be exempt from providing information at source as to compensation or other items of value paid by them to employees and others, as required by Section 27-7-39.

102 An application shall be made in behalf of the corporation or association claiming exemption, by the president, secretary or other governing officers thereof, requesting such exemption under Section 27-7-29 and must contain the following information:

1. The character of the organization.
2. The purpose for which it was organized.
3. The actual activities.
4. The sources of income and its disposition.
5. Whether or not any of the net income is credited to surplus or may inure to the benefit of any private individual or stockholder, and if so, in what manner and to what extent.
6. Whether or not exemption from filing federal income tax returns has been granted by the Federal Internal Revenue Service. If not, state reason.
7. If exemption is claimed under paragraph (7) of this regulation, the following data must be furnished:
    a. The value of products marketed during the year for members, and the value of products marketed for nonmembers.
    b. The value of purchases made during the year for members, and the value of purchases for nonmembers.
    c. The value of purchases made during the year for persons, who are neither members nor producers.
    d. If the organization deals with nonmember patrons, whether or not they are treated the same as members insofar as the charges made for service or the distribution of patronage dividends are concerned.
8. In general, all facts relating to the operation of the business which affect the right to exemption.

103 There must be attached to the application; a certified copy of the articles of incorporation, a certified copy of the by-laws, and a copy of the latest financial statement, showing assets, liabilities, receipts and disbursements of the organization. Also, the statements supporting the claim for exemptions must be sworn to.

104 When an organization has established its right to exemption, thereafter it shall file annually an affidavit stating the changes, if any, in the character of its organization or operations and shall furnish such additional information as the Commissioner may request.

105 Corporations and organizations coming within the scope and purview of the exemption authorized by Section 27-7-29, may, in lieu of the application required, file with the Commissioner a copy of the Internal Revenue Service exemption application and determination letter. To the extent that the corporation or organization has been classified by the Internal Revenue Service as exempt under the provisions of Federal Code Section 501 and regulations relating thereto and to the extent that such corporation or organization is not otherwise disqualified for the exemption authorized by the provisions of Section

27-7-29, the Commissioner shall determine such organization as exempt from the filing of income tax returns. Any change made by the Internal Revenue Service in the exempt status of the corporation will automatically and simultaneously cancel the exemption for Mississippi tax purposes. If the corporation whose, exempt status has been changed by the IRS, has reason to believe that its exempt status for Mississippi tax purposes remains unchanged, such corporation, by application may apply to the Commissioner for exemption. The Commissioner may require such additional information or documentation as he may deem necessary and pertinent in determining the exempt status of a corporation or organization making application for exemption on the basis of IRS exemption application and determination letter.

106 (Reserved)

107 (Reserved)

Subpart 11 Withholding

Chapter 01 Information at Source

100 Every individual, partnership, corporation, joint stock company or association, insurance company and any other person, including all exempt corporations not subject to tax under the provisions of the act, making payment to another person of interest, rent, salaries, wages, premiums, annuities, compensation, remunerations, emoluments, patronage dividends or other fixed or determinable gains, profits or income must complete an information return, Form 1099, for each payee in instances where such payments to each recipient:

1. Exceeds $3,000 annually and embraces salaries, fees, commissions, prizes, bonuses and other income from personal services not otherwise reported as required by Code Section 27-7-311 on Form W-2, or
2. Exceeds $600 annually and embraces dividends, interest, rents, royalties, annuities, pensions, premiums, corporate liquidations and other fixed income.

101 Such returns of information shall be completed with respect to calendar year payments, notwithstanding that the payor may report his income on a fiscal year basis, and shall cover total amounts paid for which an information return is required - not just the amount which is in excess of the sums specified in subparagraphs (a) and (b) above.

102 Annual information returns, Form 1099, shall be forwarded to the Commissioner, along with annual return, Form 62-440, completed by the payor certifying to the accuracy of the information returns attached, not later than March 15 of the following year.

103 Amounts paid with respect to life insurance, endowment or annuity contracts which are to be included in gross income of the payee are required to be reported on information returns. Payments on such policies which are surrendered before maturity, or on lapsed policies and gifts need not be reported. Amounts of income which would constitute constructive receipt to the payee and be deemed to have been paid should also be reported. Fees for

professional services paid to attorneys, physicians, and members of other professions come within the meaning of the term "fixed or determinable gains, profits and income" and are required to be reported on information returns. Amounts distributed or made available under employee's trusts to a beneficiary in any taxable year, and which have been contributed to the trust by the employer or represent earnings of the fund must be reported by the trustee.

104 The information return, Form 1099, must clearly indicate the name and address to whom and by whom reported payments are made. In the case of payments to individuals, the social security number of such payee must be shown on the return. The federal identification number or the social security number of the payor is required on the return.

105 (Reserved)

106 (Reserved)

Chapter 02 Withholding Wages Defined

100 In General.

1. The term **"wages"** means all remuneration for services performed by an employee for his employer unless specifically excepted under Code Section 27-7-303(j).
2. The name by which the remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, commissions on sales or on insurance premiums, pensions, and retired pay are wages within the meaning of the statute if paid as compensation for services performed by the employee for his employer.
3. The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piece work, or a percentage of profits; and may be paid hourly, daily, weekly, monthly, or annually.
4. Generally the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for example, stocks, bonds, or other forms of property. If services are paid for in a medium other than cash, the fair market value of the thing taken in payment is the amount to be included as wages. If the services were rendered at a stipulated price, in the absence of evidence to the contrary, such price will be presumed to be the fair value of the remuneration received. If a corporation transfers to its employees its own stock as remuneration for services rendered by the employee, the amount of such remuneration is the fair market value of the stock at the time of transfer.
5. Remuneration for services, unless such remuneration is specifically excepted by the statute, constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them.

101 Certain specific items.

1. Pensions and retirement pay. In general, pensions and retired pay are wages subject to withholding. However, no withholding is required with respect to amounts paid

to an employee upon retirement which are not taxable as annuities under the provisions of Section 27-7-15 nor upon annuities, the income from which is specifically exempt by statute, or regulations with respect thereto. So-called pensions awarded by one to whom no services have been rendered are mere gifts or gratuities and do not constitute wages. Amounts received as retirement pay for service in the Armed Forces of the United States are not subject to withholding. Amounts received as disability benefits by veterans of the armed forces are not subject to withholding.

2. Traveling and other expenses. Amounts paid specifically - either as advances or reimbursements - for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to withholding. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment.
3. Vacation allowance. Amounts of so-called "vacation allowances" paid to an employee constitutes wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages subject to withholding.
4. Dismissal payments. Any payments made by an employer to an employee on account of dismissal, that is, involuntary separation from the service of the employer, constitute wages subject to withholding regardless of whether the employer is legally bound by contract, statute, or otherwise to make such payments.
5. Deductions by employer from remuneration of an employee. Any amount deducted by an employer from the remuneration of a employee is considered to be a part of the employee's remuneration and is considered to be paid to the employee as remuneration at the time that the deduction is made.
6. Payment by an employer of employee's tax, or employee's contribution under a state law. The term "wages" includes the amount paid by an employer on behalf of an employee (without deduction from the remuneration of, or other reimbursement from, the employee) on account of any payment required for an employee under a state unemployment compensation law, or on account of any tax imposed upon the employee by any taxing authority, including federal and state income taxes.
7. Value of meals and lodging. The value of any meals or lodging furnished to an employee by his employer is not subject to withholding if the value of the meals or lodging is excludable from the gross income of the employee.
8. Facilities or privileges. Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as wages subject to withholding if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees.
9. Tips or gratuities. Tips or gratuities paid directly to an employee by a customer of an employer are subject to withholding.
10. Fees paid a public official.
    a. Authorized fees paid to public officials such as notaries public, clerks of court, sheriffs, etc. for services rendered in the performances of their official

duties are excepted from wages and hence are not subject to withholding. However, salaries paid such officials of government, or by a government, or by a government agency or instrumentality, are subject to withholding.

b. Amounts paid to precinct workers for services performed at election booths in state, county, and municipal elections and fees paid to jurors and witnesses are in the nature of fees paid to public officials and therefore are not subject to withholding.

c. Supplemental wage payments. If supplemental wages, such as bonuses, commissions, or overtime, are paid at the same time as regular wages, the income tax to be withheld should be determined as if the aggregate of the supplemental and regular wages were a single wage payment for the regular payroll period. If supplemental wages are paid at a different time, the employer may determine the tax to be withheld by aggregating the supplemental wages either with the regular wages for the current payroll period or with the regular wages for the last preceding payroll period within the same calendar year. However, if income tax has been withheld from the employee's regular wages, the employer may withhold from the supplemental wages as if no exemption had been claimed.

102 (Reserved)

103 (Reserved)

Chapter 03 Withholding—Exclusions from Wages

100 In general. The term **"wages"** does not include any remuneration for services performed by an employee for his employer which is specifically excepted from wages under Code Section 27-7-303(j). The exception attaches to the remuneration for services performed by an employee and not to the employee as an individual; that is, the exception applies only to the remuneration in an excepted category.

101 Remuneration for agricultural labor. The term **"wages"** does not include remuneration for services which constitute agricultural labor and remuneration is not subject to withholding. For the purpose of this subsection, the Commissioner adopts the federal regulations relating to the definition of "agricultural labor," except in those cases where the two laws conflict.

102 Remuneration for domestic service.

1. In a private home.

a. Remuneration paid for services of a household nature performed by an employee in or about a private home of the person by whom he is employed is excepted from "wages" and hence is not subject to withholding. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an individual in an apartment house, hotel, or other similar establishment may constitute a private home. If a dwelling house is used primarily as a boarding or lodging house for the purpose of supplying board or lodging to the public as a business enterprise,

it is not a private home, and the remuneration paid for services performed therein is not within the exception.

b. In general, services of a household nature in or about a private home include services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakes, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use.

2. In college club or college fraternity or sorority.

a. Remuneration paid for services of a household nature performed by an employee in or about the club rooms or house of a local chapter of a college fraternity or sorority by which he is employed is excepted from wages and hence is not subject to withholding. A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the remuneration paid for services performed therein is not within the exception.

b. In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, waiters, butlers, maids, janitors, laundresses, furnacemen, handymen, gardeners, housekeepers and house-mothers.

3. Remuneration not excepted. Remuneration paid for services not of a household nature, such as services performed as a private secretary, tutor, or librarian, even though performed in the employer's private home or in a local college, club or local chapter of a college fraternity or sorority, is not within the exception. Remuneration paid for services of a household nature is not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, hospitals, eleemosynary institutions, or commercial offices or establishments.

103 <u>Remuneration for Services not in Course of Employer's Trade or Business</u>.

1. Cash remuneration paid for services not in the course of the employer's trade or business performed by an employee for an employer in a calendar quarter is excepted from wages and hence is not subject to withholding unless such employee is regularly employed in the calendar quarter by such employer to perform such services.

2. The term "services not in the course of the employer's trade or business" includes services that do not promote or advance the trade or business of the employer. Remuneration paid for service performed for a corporation does not come within the exception.

3. For purposes of this exception, an individual is deemed to be regularly employed by an employer during a calendar quarter only if—

a. Such individual performs service not in the course of the employer's trade or business for such employer for some portion of the day on at least 24 days (whether or not consecutive) during such calendar quarters; or

b. Such individual was regularly employed by such employer in the performance of service not in the course of the employer's trade or business during the preceding calendar quarter.

4. In determining whether an employer has performed service not in the course of the employer's trade or business on at least 24 days during a calendar quarter, there shall be counted as one day—

a. Any day or portion thereof on which the employee actually performs such service; and

b. Any day or portion thereof on which the employee does not perform service of the prescribed character but with respect to which cash remuneration is paid or payable to the employee for such service, such as a day on which the employee is sick or on vacation.

104 Remuneration for Service Performed by a Minister of a Church or a Member of a Religious Order.

1. In general. Remuneration paid for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, or by a member of a religious order in the exercise of duties required by such order, is excepted from wages and hence is not subject to withholding.

2. Service by a minister in the exercise of his ministry. Except as provided in paragraph (3) of this subsection, services performed by a minister in the exercise of his ministry includes the ministration of sacerdotal functions and the conduct of religious worship, and the control, conduct, and maintenance of religious organizations, under the authority of a religious body constituting a church or church denomination. The following rules are applicable in determining whether services performed by a minister are performed in the exercise of his ministry:

a. Whether service performed by a minister constitutes the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of the particular religious body constituting his church or church denomination.

b. Service performed by a minister in the control, conduct, and maintenance of a religious organization relates to directing, managing, or promoting the activities of such organization. Any religious organization is deemed to be under the authority of a religious body constituting a church or church denomination if it is organized and dedicated to carrying out the tenets and principles of a faith in accordance with either the requirements or sanctions governing the creation of institutions of the faith. The term "religious organization" has the same meaning and application as is given to the term for income tax purposes.

c. If a minister is performing service in the conduct of a religious worship or the ministration of sacerdotal functions, such service is in the exercise of his ministry whether or not it is performed for a religious organization.

d. If a minister is performing service for an organization which is operated as an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination, all service performed by the minister in the conduct of religious worship, in the

ministration of sacerdotal functions, or in the control, conduct, and maintenance of such organization is in the exercise of his ministry.

e. If a minister, pursuant to an assignment or designation by a religious body constituting his church, performs services for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, all services performed by him even though such service may not involve the conduct of religious worship or the ministration of sacerdotal functions, is in the exercise of his ministry.

3. Service by a minister not in the exercise of his ministry.

a. There shall not be excepted from wages subject to withholding remuneration for service performed by a duly ordained, commissioned, or licensed minister of a church which is not in the exercise of his ministry.

b. If a minister is performing service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization and the service is not performed pursuant to an assignment or designation by his ecclesiastical superiors, then only the service performed by him in the conduct of religious worship or the ministration of sacerdotal functions is in the exercise of his ministry.

4. Service in the exercise of duties required by a religious order. Service performed by a member of a religious order in the exercise of duties required by such order includes all duties required of the member by the order. The nature or extent of such service is immaterial so long as it is a service which he is directed or required to perform by his ecclesiastical superiors.

105 (Reserved)

106 (Reserved)

Chapter 04 Withholding—Employee Defined

100 The term **"employee"** includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term includes officers and employees, whether elected or appointed, of the United States, a state, or any political subdivision thereof, or any agency or instrumentality of any one of the foregoing.

101 Generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who

performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is not an employee.

102 If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

103 All classes or grades of employees are included with the relationship of employer and employee. Thus, superintendents, managers, and other supervisory personnel are employees. Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is not considered to be an employee of the corporation. A director of a corporation in his capacity as such is not an employee of the corporation.

104 (Reserved)

105 (Reserved)

Chapter 05 Withholding—Employer Defined

100 The term **"employer"** means any person for whom an individual performs or performed any service, of whatever nature, as the employee of such person.

101 It is not necessary that the services be continuing at the time the wages are paid in order that the status of the employer exist. Thus, for the purposes of withholding, a person for whom an individual has performed past services for which he is still receiving wages from such person is an "employer."

102 An employer may be an individual, a corporation, a partnership, a trust, an estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group or entity. A trust or estate, rather than the fiduciary acting for or on behalf of the trust or estate, is generally the employer.

103 The term "employer" embraces not only individuals and organizations engaged in trade or business, but organizations exempt from income tax, such as religious and charitable organizations, educational institutions, clubs, social organizations and societies, as well as the government of the United States, the State of Mississippi, counties, municipalities, their agencies, instrumentalities, and political subdivisions.

104 (Reserved)

105 (Reserved)

Chapter 06 Withholding—Payroll Period Defined

100 The term **"payroll period"** means a period of which a payment of compensation is ordinarily made to the employee, whether weekly, biweekly, semi-monthly, monthly, quarterly, or daily, or any other fixed period.

101 For the purpose of income tax withholding, an employee can have only one payroll period for wages paid by any one employer. If an employee has a regular payroll period, the tax should be withheld on the basis of that regular period even though the employee does not work the full period. If a specified payroll period on one of the above basis cannot be established, the tax shall be withheld on a per diem basis.

102 (Reserved)

103 (Reserved)

Chapter 07 Withholding of Tax—Requirements of

100 The employer is required to collect the tax by deducting and withholding the amount thereof from the employee's wages as and when paid, either actually or constructively. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case, the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his own control and disposition.

101 Notwithstanding any other provisions of Section 27-7-301 et seq., an employer shall not deduct and withhold any tax upon a payment of wages made to an employee if there is in effect, with respect to the payment, a Mississippi withholding exemption certificate furnished to the employer by the employee which contains, or which is attached thereto, statements that—

1. The employee incurred no liability for income tax imposed under the Mississippi income tax law for his preceding taxable year; and
2. The employee anticipates that he will incur no liability for income tax under the Mississippi income tax law for his current taxable year.

101.01 The purpose of this Section is to exempt certain taxpayers who work only a part of the year, such as students and retired persons, from the requirements of Mississippi income tax withholding and to relieve such persons from the necessity of filing a return solely for the purpose of securing a refund of the total amount withheld. Both conditions as set forth above must be met before the total withholding exemption is valid.

101.02 Generally, individuals who meet the above requirements are the following:

1. Single persons with annual gross income of less than $8,300 (1981 and thereafter).

2. Head-of-family with a dependent child with an annual gross income of less than $12,900 (1981 and thereafter).
3. Married individuals entitled to file jointly with a combined joint income of less than $12,900 (1981 and thereafter). For 1979 and thereafter, add $1500 for each dependent.
4. Married individuals filing separate returns (2 returns) where the gross income of each is less than $6,450 (1981 and thereafter). For 1979 and after, add $750 for each dependent.

102 When an employee furnishes his employer with a withholding exemption certificate containing the required statements for exemption, the employer may give effect to the certificate within thirty (30) days after the certificate was furnished, or the employer, if he wishes, may give immediate effect. A certificate remains in effect, in the case of a calendar year employee-taxpayer, through April 30 of the following calendar year. For a fiscal year employee-taxpayer a certificate remains effective through the last day of the fourth month following his taxable year. A new certificate must then be filed if the exemption is to be continued.

103 If an employer receives a withholding exemption certificate, with statements as to non-liability for withholding tax, which appears to be false or which is not within the intent and the purpose of this section, the employer shall consider such certificate a nullity for purposes of computing withholding tax; the employer shall inform the employee who submitted the certificate that it is invalid; and shall request another withholding exemption certificate from the employee. If the employee who submitted the invalid certificate fails to comply with the employer's request, the employer shall withhold from the employee on the basis of a zero exemption.

104 (Reserved)

105 (Reserved)

Chapter 08 Credit for Tax Withheld

100 An employee from whose wages tax is withheld should claim credit for the tax withheld on his income tax return for the calendar year during which the tax was withheld. Credit will be allowed only if a proper copy of his withholding statement, Form W-2, or other authorized wage and tax statement, is attached to his return. A fiscal-year taxpayer should claim credit for the tax withheld on his return for his fiscal year beginning in the calendar year during which the tax was withheld. For example, a taxpayer having a fiscal year ending July 31 is entitled to credit for tax withheld during the calendar year 1986 on his return for his fiscal year ending July 31, 1987. If more than one tax year begins during the calendar year during which the tax was withheld, the credit should be claimed on the return for the last such taxable year.

101 (Reserved)

102 (Reserved)

Chapter 09 Employees Subject to Withholding

100 Resident employees.

1. Resident employees rendering services exclusively in Mississippi are subject to withholding computed upon total wages received. Resident employees rendering services partly within and partly without the state are likewise subject to withholding on total wages, except in instances where the nature of the business activity of his employer requires registration with another state for withholding on wages for services rendered by the resident employee in the foreign state. So as to avoid duplicate withholding on the same wages, those wages of a resident employee realized from services in another state may be excluded from Mississippi withholding to the extent that income tax is withheld for another state. If tax is not withheld for another state, the employer is required to withhold on the total wages of resident employees regardless of where the wages were earned or realized.
2. Resident employees performing services in Mississippi for nonresident employers or foreign corporations are subject to withholding computed on total wages. Resident employees in this category performing services partly within and partly without Mississippi are likewise subject to withholding on total wages except in those instances where withholding is required by another state on wages for services rendered by the resident in another state. To the extent that withholding is not required by another state on wages of a resident for services rendered there, Mississippi withholding should be computed on total wages.
3. Resident employees who commute each working day to a location outside Mississippi and who realize wages for services performed in another state are subject to Mississippi withholding on total wages to the extent that the state in which the wages are earned does not impose an individual income tax on such wages.
4. Employers, whether resident or otherwise, having employees who realize wages from services performed within this state are required to register for withholding as provided by Reg. 1116. Out-of-state employers making payment of wages to Mississippi residents for services rendered out of state, to the extent subject to withholding within the activity described in Paragraph (a)(3) of this regulation, are required to register where such employers are likewise qualified to do business in Mississippi, doing business in Mississippi, or otherwise within the taxing jurisdiction of this state. Other out-of-state employers so involved are requested to voluntarily register.

101 Nonresident employees.

Nonresident employees rendering services exclusively in Mississippi are subject to withholding computed upon total wages received, as in the case of a resident. If the nonresident's services are performed partly within and partly without the state, only wages paid for services performed within Mississippi are subject to withholding. The burden and duty is placed upon the employer to determine the place of residence of each employee, and to determine the exact part of each employee's earnings which is attributable to

services performed within Mississippi and to apportion such earnings accordingly for the purpose of withholding the tax. When a nonresident officer or employee of a corporation has his base situs in Mississippi and earns his salary, wages, or commissions while assigned to or traveling from the Mississippi base, the total wages received incident thereto are subject to Mississippi withholding.

102 (Reserved)

104 (Reserved)

105 (Reserved)

Chapter 10 Employer Liable—Failure to Withhold

100 If the employer in violation of the provisions of section 27-7-305 fails to deduct and withhold the tax, the employer is liable therefore as provided by statute. If thereafter the income tax against which the tax under section 27-7-305 may be credited is paid, the tax under section 27-7-305 shall not be collected from the employer. Such payment does not, however, operate to relieve the employer from liability for penalties or additions to the tax applicable in respect of such failure to deduct and withhold. The employer will not be relieved of his liability for payment of the tax required to be withheld unless he can show that the tax against which the tax under section 27-7-305 may be credited has been paid. See section 27-7-345 relating to interest and penalties.

101 (Reserved)

102 (Reserved)

Chapter 11 Report of Income Tax Withheld

100 Every employer who withheld or was required to withhold Mississippi income tax from wages is required to make a monthly or quarterly return on "Employers Return of Mississippi Income Tax Withheld." For monthly returns, Form 62-405 shall be required when the tax withheld or required to be withheld exceeds $300 per month. This monthly return must be filed and the tax paid on or before the 15th day of the month following the month for which such amounts were withheld. If the amount of tax withheld or required to be withheld is less than $300, the withheld tax may, with the approval of the Commissioner, be filed on a quarterly return.

101 The quarterly return (Form 62-400) shall be filed and the tax paid on or before the 15th day of the month following the calendar quarter for which such amounts were withheld. The Commissioner may also require the filing of monthly returns by employers specified by Section 27-7-309(2) and 27-7-309(3).

102 An employer who has become liable to file a return under a particular filing period (monthly or quarterly) must continue on that basis until a final return is filed or permission to change has been granted by the Commissioner.

103 The return of a governmental employer should be made by the person designated for that purpose or having control over payment of wages. If a consolidated return and remittance of the tax withheld cannot be made by the employer because of the complexity of his organization, he may designate certain branch offices or divisions as withholding agents. These agents would then perform the actual withholding and remitting. However, regardless of any internal arrangements which may be established by these "complex employers", the legal responsibility and liability under the law still rest with the home office. In such cases, each division or agency filing a return shall have a separate registration and identification number.

104 Preprinted withholding tax coupon booklets are mailed to employers (Form 62-400) for quarterly and (Form 62-405) for monthly fliers and these forms should be used in filing returns. Should an employer fail to receive a form, he should tender the tax withheld so as to assure that the return be postmarked not later than the regular due date. Such remittance should be accompanied by a letter from the employer stating failure to receive a reporting form, giving employer identification number, reporting period, and stating name and current mailing address of the employer. Failure to receive a reporting form does not relieve the employer of his obligation to pay the tax by the regular due date. The last report filed by the employer who either goes out of business or otherwise ceases to pay wages subject to withholding must be marked "final return".

105 (Reserved)

106 (Reserved)

Chapter 12 Payment of Income Tax Withheld

100 All moneys withheld in accordance with the provisions of the Mississippi Income Tax Withholding Act of 1968, as amended, shall be deemed to be held by the employer in trust for the State of Mississippi, and shall be recorded by the employer in a ledger account so as to clearly indicate the amount of tax so withheld, and that such amount is the property of the State of Mississippi.

101 Quarterly or monthly returns must be filed by each employer with the Commissioner on forms made available by the Commissioner for that purpose, and such returns must be accompanied with a remittance from the employer for the full amount of the tax withheld by him for that quarter.

102 Any employer who fails either to withhold the required tax or pay it to the Commissioner as specified, or both, is liable to the state for the full amount of all taxes on the income paid by him to his employees for the period for which he failed to report or turn over the same, together with all interest and penalties accrued. Any employer who fails to deduct,

withhold or remit moneys or to furnish to any individual information statements, or maintain records as required is guilty of a misdemeanor.

103 (Reserved)

104 (Reserved)

Chapter 13 Reports of Withholding—Correcting Mistakes

100 If more than the correct amount of tax is paid to the Commissioner, proper adjustment may be made on the first monthly or quarterly return filed after the error is discovered. If less than the correct amount of tax is paid to the Commissioner, an amended report with remittance must be filed immediately. If a mistake in income tax withholding cannot be adjusted on a return for a subsequent period of the same calendar year, the Commissioner should be consulted for the proper method of correction.

101 The employer is authorized to deduct the amount of the under-collection from later payments to the employee, if none or less than the correct amount of the tax is deducted from any wage payment. However, the employer is liable to the Commissioner for any underpayment. Reimbursement of the employer is a matter of settlement between the employer and the employee. The over-collection shall be repaid to the employee, if more than the correct amount of tax is deducted from any wage payment. Every over-collection for which the employer does not have evidence of repayment to the employee must be reported and paid to the Commissioner with the return for the filing period in which the over-collection was made.

102 (Reserved)

103 (Reserved)

Chapter 14 Wage and Tax Statements and Reports

100 On or before the date prescribed by the Commissioner, each employer must transmit to the Commissioner in the format and manner prescribed all wage and tax statements (Form W-2 or other withholding statements) and reports for the year.

101 An extension of time for the submission of wage and tax statements and accompanying reports may be granted by the Commissioner.

102 (Reserved)

103 (Reserved)

Chapter 15 Statement Furnished Employees

100 Each employer, on or before January 31 of each year or within thirty (30) days after termination of the employment, shall furnish each employee, whose wages were subject to withholding whether or not tax was withheld on such payments, a withholding statement in duplicate showing:

1. Total wages paid.
2. Amount of Mississippi income tax withheld.
3. Amount of federal income tax withheld.
4. Name and address of employee.
5. Social Security number of employee.
6. Name, address and Mississippi identification number of employer.
7. Period of employment - calendar year unless indicated otherwise.

101 Wages should include all remuneration paid to the employee, whether paid in cash or otherwise. Wages should be reported on form W-2 and should provide the same level of detail as prescribed by the Internal Revenue Service and such other information as required by the Commissioner. Each statement should identify wages regardless of source, as well as on a state by state basis. The withholding for each state should be identified as well.

102 The withholding statement for each employee should be prepared on Federal Form W-2. The original state copy should be filed with the Commissioner in the format and manner prescribed. Two copies should be given to the employee (one of which is required to be attached to the individual income tax return filed by the employee and the other retained by the employee); and a copy should be retained by the employer.

103 If it becomes necessary to correct Form W-2 after it has been given to an employee, a corrected statement should be issued to the employee and a copy mailed to the Commissioner, such copy to be clearly marked "corrected by employer."

104 (Reserved)

105 (Reserved)

Chapter 16 Determination of Income Tax to be Withheld

100 The amount of income tax to be withheld must be determined in accordance with withholding tables prepared by the Commissioner. Withholding tables show amounts to be withheld for daily, weekly, biweekly, semi-monthly, and monthly payroll periods.

101 Employers using electronic data processing equipment for payroll computations may use special formulas adapted to the machines, if the result will be consistent with the withholding tables prepared by the State Tax Commission. A computer payroll accounting flowchart is furnished in the Income Tax Withholding Tables Booklet.

102 (Reserved)

103 (Reserved)

Chapter 17 Registration of Employers

100 The Mississippi Income Tax Withholding Act of 1968, as amended, became effective as of January 1, 1969. All employers subject to the provisions of the act on that date are required to be registered for withholding. All new employers must register in time to begin withholding from the inception of their business. Form 60-007 must be completed by each employer subject to the provisions of the act. Application for registration may be obtained by writing to the Withholding Tax Section, Income Tax Division, State Tax Commission, Post Office Box 960, Jackson, Mississippi 39205. All information requested thereon must be furnished in detail.

101 The Identification Number assigned by the Internal Revenue Service for federal income tax withholding purposes is likewise used for state withholding purposes and such number becomes the identification number of the employer. In making application for registration, the employer should indicate his federal I.D. number on his registration application. If a federal I.D. number has not been applied for or assigned, the Mississippi application should not be delayed, but such number should be furnished as soon thereafter as possible.

102 Once an employer has made application for withholding registration, the employer is registered as a withholding agent for the State of Mississippi and should begin immediately to withhold Mississippi income tax applicable to the payment of wages to his employees. The Commissioner will mail to the employer, approximately thirty (30) days before the due date, all reports, including instructions, that must be submitted after the close of the filing period. A report should be filed with the Commissioner for each monthly or quarterly filing period, Form 62-405 for monthly and 62-400 for quarterly, which would be in the preprinted coupon booklet. In the event no tax is due, a negative return nonetheless should be filed. For additional information on filing of returns and payment of tax refer to Regulations 1111 and 1112.

103 (Reserved)

104 (Reserved)

Chapter 18 Withholding Exemption Certificates

100 <u>On commencement of employment</u>. On or before the date on which an individual commences employment with an employer, the individual shall furnish the employer with a signed withholding exemption certificate (Form 62-420) relating to the amount of withholding exemption to which he is entitled. The employer is required to request a withholding exemption certificate from each employee, but if the employee fails to furnish such certificate, such employee shall be considered as claiming no withholding exemption and the employer is required to withhold on that basis.

101 <u>Change in exemptions</u>. If, on any day during the calendar year, the amount of withholding exemption to which the employee is entitled is increased or decreased, an amended certificate should be filed by the employee with his employer within ten (10) days from the

date of such change. Exemption certificates filed by the employee shall remain in force until amended by the employee.

102 More than one employer. If an employee has more than one employer at the same time, he may claim his exemptions with only one employer.

103 Excessive exemption. The employer is not required to ascertain whether or not the amount of exemption claimed by the employee is greater than the amount of exemption to which the employee is entitled, provided the exemption claimed is not in excess of that authorized by law. If, however, the employer has reason to believe that the amount of withholding exemption claimed by the employee is greater than the amount to which the employee is entitled, the State Tax Commission should be so advised.

104 Amount of exemption. The amount of exemption to which an employee is entitled to on any day depends upon his status as a single or married individual, head of family, or the number of dependents claimed.

104.01 The amount of exemption to which an individual is entitled is as follows:

1. Single individuals—for Calendar year 1981 and thereafter—$6,000
2. Married individuals—for Calendar year 1981 and thereafter—$9,500
   In instances where husband and wife are both employed, the joint personal exemption plus any allowable additional exemptions (dependents, blindness or age) may be divided between the spouses, in multiples of $500, in any manner they may choose so long as the total amount of exemptions claimed by both spouses does not exceed the amount of exemption authorized by law. Effective, however, January 1, 1979, Section 27-7-21 provides that married individuals electing to file separate returns (two returns) must, on filing of such returns, divide the exemptions equally between the two spouses. If married individuals contemplate filing two separate returns, they should equally divide the exemptions in completing the Employee Withholding Exemption Certificate as filed with their respective employers. Married individuals who contemplate filing a joint or combined return (one return) may continue to divide the exemption between them in any manner they choose.
3. Head-of-family—for Calendar year 1981 and thereafter—$9,500 See Section 27-7-21 for definition of head-of-family.
4. Dependents—for Calendar year 1979 and thereafter—$1,500 An additional exemption may be claimed for each dependent of the taxpayer if such dependent qualifies as a dependent for federal income tax purposes, except for the one dependent that qualifies a taxpayer for the head of family status. Dependents do not include taxpayer and spouse. Married individuals may divide the number of their dependents between them in any manner they choose. See, however, the warning under paragraph (2) relating to married individuals filing separate returns (two returns).
5. Age 65 and over—for Calendar year 1979 and thereafter—$1,500 An additional exemption may be claimed by either taxpayer or spouse or both if either or both have reached the age of 65 before the close of the taxable year. No additional exemption is authorized for dependents by reason of age.

6. Blind—for Calendar year 1979 and thereafter—$1,500 An additional exemption may be claimed by either taxpayer or spouse or both if either or both are blind. No additional exemption is authorized for dependents by reason of blindness.

105 (Reserved)

106 (Reserved)

Chapter 20 Records to be Kept by Employer

100 Every employer required to deduct and withhold the tax shall keep and preserve for a period of three (3) years after the date the tax which they relate became due, on the date the tax is paid, whichever is later, the following records and information:

1. Name, address, social security number and period of employment of all employees receiving compensation from the employer.
2. Amounts and dates of all wage payments subject to the Mississippi income tax withholding.
3. Employee's state income tax withholding exemption certificates.
4. Employer's state income tax withholding registration number.
5. In the case of nonresidents, record of allocation of working days in the State of Mississippi.
6. Records of quarterly or monthly returns including dates and amounts of payment.
7. All other wage, tax, and income/information statements and reports required to be filed with the Commissioner.

101 In all cases, the employer should maintain such other records in addition to those detailed above which he feels will assist the commission in auditing records or verifying the liability reported. Any employee's copies of the wage and tax statement (Form W-2) which cannot be delivered to the employee after reasonable effort is exerted should be retained by the employer for a three year period.

102 (Reserved)

103 (Reserved)

Chapter 21 Estimated Tax Payments

100 INDIVIDUAL ESTIMATED TAX PAYMENTS.

1. Every individual taxpayer who does not have at least eighty percent (80%) of his annual tax liability prepaid through withholding must make estimated tax payments if his annual tax liability exceeds two hundred dollars ($200). Every estate or trust with an annual income tax liability in excess of two hundred dollars ($200) must make estimated tax payments. These estimated tax payments must not be less than eighty percent (80%) of the annual income tax liability. Any taxpayer who fails to file the estimated tax return and pay the tax within the time prescribed or underestimates the required amount shall be liable for interest of one percent (1%) per month on underpayment of tax from the date payment is due until paid.

2. The total estimated tax may be paid on or before the fifteenth day of the fourth month of the income year of the taxpayer or, at the election of the taxpayer, the estimated tax may be paid in four equal installments on forms furnished by the Commissioner. The returns and payments are due on or before:
   a. The 15th day of the 4th month of the income year,
   b. The 15th day of the 6th month of the income year,
   c. The 15th day of the 9th month of the income year,
   d. The 15th day of the 1st month after the close of the income year.
3. Exceptions:
   No interest will be charged for underpayment of estimated tax if the estimated tax payments for current year are equal to or more than the prior year's tax liability provided a return was filed and the return covered a period of twelve (12) months. If the taxpayer was not required to file a Mississippi resident return for the prior year, the estimated tax payments must be equal to or more than the tax liability computed on prior year's income based on Mississippi current year's rates and exemption.

101 CORPORATE ESTIMATED TAX PAYMENTS.

1. Every corporate taxpayer with an annual income tax liability in excess of two hundred dollars ($200) must make estimated tax payments. These estimated tax payments must not be less than ninety percent (90%) of the annual income tax liability. Any taxpayer who fails to file an estimated tax return and pay the tax within the time prescribed or underestimates the required amount shall be liable for penalty of ten percent (10%) plus interest of one percent (1%) per month on underpayment of tax from the date payment is due until paid.
2. The total estimated tax may be paid on or before the fifteenth day of the fourth month of the income year of the taxpayer or, at the election of the taxpayer, the estimated tax may be paid in four equal installments on forms furnished by the Commissioner. The returns and payments are due on or before:
   a. The 15th day of the 4th month of the income year,
   b. The 15th day of the 6th month of the income year,
   c. The 15th day of the 9th month of the income year,
   d. The 15th day of the 12th month of the income year.
3. Exceptions:
   a. No interest or penalty will be charged for underpayment of estimated tax, except "large" corporations, if the estimated tax payments for current year are equal to or more than the prior year's tax liability provided a return was filed and the return covered a period of twelve (12) months. A "large corporation" - one with Mississippi taxable income of at least $1 million in any one of the three immediately preceding tax years -is prohibited from using its prior year's tax liability, except in determining the first installment of its tax year. Any reduction in a large corporation's first installment as a result of using the prior year's tax must be recaptured in the corporation's second installment. In applying the $1 million test, taxable income is computed without regard to net operating loss or capital loss carryforwards

or carrybacks. The estimated tax payments on large corporations must be at least ninety percent (90%) of the actual tax due for the current tax year.

b. If the reporting corporation of a controlled group of corporations filing in Mississippi and using the consolidated or combined income tax return election reports at least $1 million of Mississippi taxable income, which is made up of the sum of all income or losses of the members of the group, then the group and/or reporting corporation will be considered a large corporation even if another member of the group becomes the reporting corporation. Additionally, if one or more members of a controlled group of corporations filing in Mississippi using the consolidated or combined income tax return election reports at least $1 million of taxable income then the group will be considered a large corporation even though the sum of all income or losses of the members of the group is less than $1 million as reported by the reporting corporation.

c. A corporation may annualize its income for estimated tax payments, but the total estimated tax payments for the tax period must be at least ninety percent (90%) of the tax on the basis of current Mississippi income and must be paid by the last estimate date.

d. A corporation may not use more than one exception. It cannot annualize and also use last year's tax paid.

e. If a corporation is classified as a large corporation and is merged, liquidated or combined in any fashion into a corporation which is not classified as a large corporation, then the surviving corporation will be classified as large corporation.

102 (Reserved)

103 (Reserved)

Chapter 22 Withholding on Gambling Winnings

100 There shall be withheld three percent (3%) of the amount of gaming winnings received from Mississippi gaming establishments. The amounts subject to this three percent (3%) withholding requirement are the amounts paid, whether in cash or other form of remuneration to a patron of a gaming establishment.

101 The gaming establishment must register to withhold Mississippi income tax in the same manner as stated in Title 35, Part III, Subpart 11 Chapter 17 of the Mississippi Administrative Code, Registration of Employers. The withholding account used to report the withholding on wages cannot be used to report withholding on gaming winnings. A separate account for withholding on gaming winnings must be obtained from the withholding division of the Mississippi State Tax Commission. A monthly return must be filed and the tax paid on or before the 15th day of the month following the month for which such amounts were withheld.

102 Gaming establishments are not required to complete the Mississippi withholding exemption certificate form for gaming winnings. However, the gaming establishment must keep the following records and information for three (3) years after the date the tax becomes due or is paid, whichever is later:

1. Total gaming winnings paid.
2. Amount of Mississippi income tax withheld.
3. Name, address and social security or identification number of the party in receipt of gaming winnings.
4. Name, address and Mississippi identification number of the gaming establishment.
5. Payment period -- calendar year unless indicated otherwise.

103 Each gaming establishment, in the form and manner prescribed by the Commissioner, shall prepare Federal Form W-2Gs, or other federal forms which are used to report income for federal tax purposes with the preceding information for those patrons whose gaming winnings were subject to Mississippi withholding. If the federally prescribed information return does not allow for the recording of both state income and state tax withholdings, then a W-2G should be completed and attached as part of the filing.

104 The original state copy is filed in accordance with Title 35, Part III, Subpart 11 Chapter 14 of the Mississippi Administrative Code.

105 If it becomes necessary to correct Form W-2G after it has been given to a patron, a corrected statement should be mailed to the Commissioner, such copy to be clearly marked "corrected by gaming establishment." In case a withholding statement is lost or destroyed, a substituted copy may be issued marked "reissued by gaming establishment."

106 Multi-period payoffs: If a patron is entitled to receive either a lump-sum payment or a series of periodic payments received at least annually, then a levy of 3% is levied on the lump-sum amount in the year it is constructively received. The 3% levy is a liability of the Mississippi gaming establishment which was a party to the wager, regardless of whether it is the paying agent.

107 TERMS:

1. The term "Mississippi gaming establishment" or "gaming establishment" includes any establishment where gambling games are conducted or operated within this state and any party that provides or is responsible for the payment of cash or other remuneration resulting directly or indirectly from play at gambling games within this state.
2. The term “Mississippi gaming winnings” or "gaming winnings" includes all amounts that are paid, whether in cash or other form, by Mississippi gaming establishments to patrons which are subject to the withholding and/or reporting requirements of the Internal Revenue Code (IRC) as specified in sections 27-7-901 and 27-7-903. Such amounts are not limited to cash or remuneration from play at a gambling game, but include, without limitation, amounts considered prizes, awards, tournament winnings or similar types of compensation. For purposes of tournament winnings, the withholding reporting requirements are further explained below.

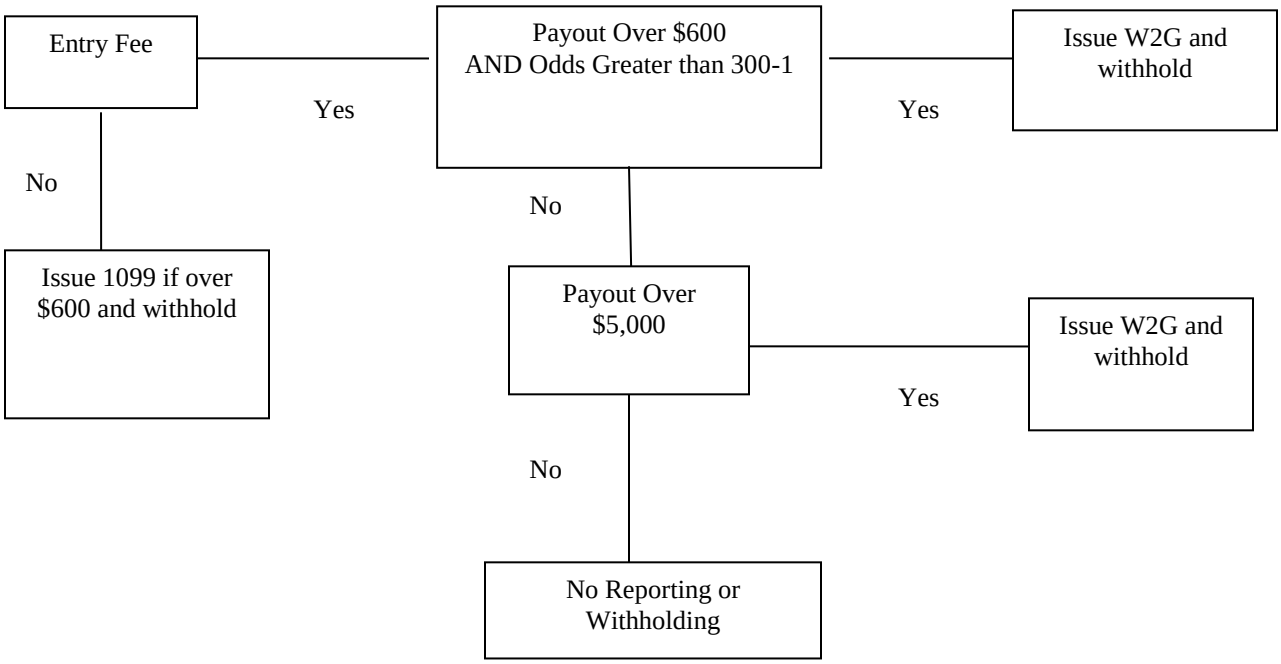
3. The term "paid" means the gross amount of gaming winnings without respect to any reduction for tax withholdings or other reserves and may not be less than the amount reported for federal tax purposes.

108 Tournaments: One type of gaming activity that gives rise to gaming winnings subject to the three percent (3%) withholding under sections 27-7-901 and 27-7-903 are various types of tournaments operated by Mississippi gaming establishments. For tournaments involving slot machines, bingo and keno, the threshold for withholding and/or reporting under the IRC, and thereby the three percent (3%) withholding under section 27-7-901 and 27-7-903, is the same as the threshold for the game involved; $1,200 not reduced by wager for slots and bingo and $1,500 reduced by wager for keno. In other tournaments, such as poker tournaments, the thresholds for withholding and/or reporting under the IRC, and thereby the three percent (3%) withholding requirement under sections 27-7-901 and 27-7-903, vary depending on the odds involved in the tournament, the amount of the proceeds won and whether there is an entry fee. In regard to these other tournaments, gaming establishments shall withhold and remit based on the attached chart which is incorporated herein by this reference.

109 The Commissioner will follow Federal Rules, Regulations, and Revenue Procedures relating to gaming winnings to the extent that such procedures are not deemed contrary to the context and intent of Mississippi Law.

Tournament Reporting and Withholding

110 Tournament Reporting and Withholding



Footnote:

- Proceeds are reduced by the wager (entry fee paid).
- If the entry fee is paid by the participant, only a W2G can be issued (tournament contributions by the company are irrelevant).
- Reporting and withholding is not triggered until the participant cashed out (final round).
- For reporting and withholding requirements under the IRC on gambling winnings of non resident aliens, see instructions to IRS Form 1042S and IRS Publication 515 or any replacement thereof. The gaming establishment should substitute a 1042S for the W2G or 1099 MISC.

Examples:

- Patron pays tournament entry fee and wins satellite tournament. Patron receives no cash but does move on to next round. W2G reporting and withholding is only triggered when patron cashes out. The reportable amount is reduced by the entry fee (subject to above flowchart).
- Patron pays tournament entry fee and wins tournament. Patron receives no cash but does receive a paid (comp'd) entry fee to a third party tournament. Patron gets a W2G for the value of the comp reduced by the original paid entry fee. Gaming establishments may have to gross up the W2G for Mississippi withholding tax purposes.
- Gaming establishment comps a tournament entry fee for a patron. A 1099 MISC must be issued for any payout of $600 or more. The reportable amount is not reduced by the comp'd entry fee.

111 (Reserved)

Chapter 23 – Transfer of Assessments

100 Definitions

101 For purposes of this chapter, the term "employer" means a person doing business in, or deriving income from sources within the state, who has control of the payment of wages to an individual for services performed, or a person who is the officer or agent of the person having control of the payment of wages. "Employer" is further defined under Title 35, Part III, Subpart 11, Chapter 05 of the Miss. Admin. Code.

102 The term "person" means and includes individuals, fiduciaries, corporations, partnerships, associations, the state and its political subdivisions, and the federal government, its agencies and instrumentalities.

103 (Reserved)

200 General

201 Persons owning stock of ten percent (10%) or more of a total corporation or ten percent (10%) interest or more in a limited liability company (LLC) with thirty-five (35) or less owners, and are exercising responsibility for fiscal management at the time that the tax was withheld or required to be withheld are liable for the taxes due.

202 Exercising responsibility for fiscal management includes, but is not limited to, any one of the following activities:

1. A significant involvement in the day-to-day management of the business;

2. the authority to sign business checks or tax returns;
3. the authority to direct payment of business funds to creditors;
4. the authority to pledge business assets as collateral for loans, advances, or lines of credit for the business;
5. the authority to bind the business to contracts;
6. the authority to hire or fire employees who are authorized to perform any act described in three (3) through five (5) of this paragraph;
7. acting as a high ranking officer of the corporation or LLC, including, but not limited to, President, Vice-President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chairman, Vice-Chairman, Director, Controller, Secretary and/or Treasurer;
8. ownership of more than fifty percent (50%) interest in the corporation or LLC unless an operating agreement exists at the time the tax liability is accrued specifying that the taxpayer is not responsible for fiscal management; or
9. participating in decisions regarding the purchase or sale of the business or the authority to participate in decisions regarding the purchase or sale of the business.

203 The Department must transfer the assessment from the corporation or LLC to the employer or person exercising fiscal management within thirty-six (36) months of when the liability of the corporation or LLC becomes final. A notice will be issued to the transferee, and once received the transferee will have sixty (60) days in which to appeal the transfer of assessment. The transfer is appealable on the issue of the ownership interest and fiscal management requirements only.

204 Bankruptcy of the transferee does not prevent the Department from transferring a liability.

205 (Reserved)

35.III.11.23 revised effective January 7, 2019

112 (Reserved)

Subpart 12 Franchise Tax

Chapter 01 Loans from Affiliates and Shareholders

100 Miss. Code Ann. Section 27-13-9 of the franchise tax law provides for an exclusion from the franchise tax base sums representing debts, notes, bonds and mortgages due and payable, except where notes or debts due are provided by an affiliated company as a substitute for stock or paid in capital.

101 Factors to consider when determining if loans provided by an affiliated company or stockholder are a substitute for stock or paid in capital include:

1. the corporate debt to equity ratio in comparison to the consolidated group's debt to equity ratio if the related companies are in the same or a similar industry;

2. the corporate debt to equity ratio in comparison to the industry standard for the corporation's industry;
3. the ability of the corporation to obtain the loan from the unrelated third party without the relationship of the affiliated company or stockholder if the affiliated company or stockholder actually obtained the funds for the loan from an unrelated third party. The corporation's ability to have obtained the loan from the unrelated third party must be adequately documented; and
4. any other factors the Commissioner determines are relevant.

102 If loans by an affiliated company or stockholder are determined to be a substitute for stock or paid in capital, all or a portion of the loan shall be added back to the franchise tax base so as to achieve a debt to equity ratio that reflects an adequately capitalized corporation.

103 (Reserved)

104 (Reserved)

35.III.12.02 revised effective July 1, 2009