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)

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103~~1~~ (Reserved)

104~~2~~ (Reserved)