

By: Minor

To: Finance

SENATE BILL NO. 3319
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, TO
2 RESTRICT THE STATE INCOME TAX DEDUCTION FOR CERTAIN DIVIDEND
3 DISTRIBUTIONS FROM REAL ESTATE INVESTMENT TRUSTS; AND FOR RELATED
4 PURPOSES.

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

6 SECTION 1. Section 27-7-17, Mississippi Code of 1972, is
7 amended as follows:[WAN1]

8 27-7-17. In computing taxable income, there shall be allowed
9 as deductions:

10 (1) **Business deductions.**

11 (a) Business expenses. All the ordinary and necessary
12 expenses paid or incurred during the taxable year in carrying on
13 any trade or business, including a reasonable allowance for
14 salaries or other compensation for personal services actually
15 rendered; nonreimbursable traveling expenses incident to current
16 employment, including a reasonable amount expended for meals and
17 lodging while away from home in the pursuit of a trade or
18 business; and rentals or other payments required to be made as a
19 condition of the continued use or possession, for purposes of the
20 trade or business of property to which the taxpayer has not taken
21 or is not taking title or in which he had no equity. Expense
22 incurred in connection with earning and distributing nontaxable
23 income is not an allowable deduction. Limitations on
24 entertainment expenses shall conform to the provisions of the
25 Internal Revenue Code of 1986.

26 (b) Interest. All interest paid or accrued during the
27 taxable year on business indebtedness, except interest upon the

28 indebtedness for the purchase of tax-free bonds, or any stocks,
29 the dividends from which are nontaxable under the provisions of
30 this article; provided, however, in the case of securities
31 dealers, interest payments or accruals on loans, the proceeds of
32 which are used to purchase tax-exempt securities, shall be
33 deductible if income from otherwise tax-free securities is
34 reported as income. Investment interest expense shall be limited
35 to investment income. Interest expense incurred for the purchase
36 of treasury stock, to pay dividends, or incurred as a result of an
37 undercapitalized affiliated corporation may not be deducted unless
38 an ordinary and necessary business purpose can be established to
39 the satisfaction of the commissioner. For the purposes of this
40 paragraph, the phrase "interest upon the indebtedness for the
41 purchase of tax-free bonds" applies only to the indebtedness
42 incurred for the purpose of directly purchasing tax-free bonds and
43 does not apply to any other indebtedness incurred in the regular
44 course of the taxpayer's business. Any corporation, association,
45 organization or other entity taxable under Section 27-7-23(c)
46 shall allocate interest expense as provided in Section
47 27-7-23(c)(4)(H).

48 (c) Taxes. Taxes paid or accrued within the taxable
49 year, except state and federal income taxes, excise taxes based on
50 or measured by net income, estate and inheritance taxes, gift
51 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
52 use taxes unless incurred as an item of expense in a trade or
53 business or in the production of taxable income. In the case of
54 an individual, taxes permitted as an itemized deduction under the
55 provisions of subsection (2)(a) of this section are to be claimed
56 thereunder.

57 (d) Business losses.

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

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

64 (e) Bad debts. Losses from debts ascertained to be

65 worthless and charged off during the taxable year, if sustained in
66 the conduct of the regular trade or business of the taxpayer;
67 provided, that such losses shall be allowed only when the taxpayer
68 has reported as income, on the accrual basis, the amount of such
69 debt or account.

70 (f) Depreciation. A reasonable allowance for
71 exhaustion, wear and tear of property used in the trade or
72 business, or rental property, and depreciation upon buildings
73 based upon their reasonable value as of March 16, 1912, if
74 acquired prior thereto, and upon cost if acquired subsequent to
75 that date.

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

83 (h) Contributions or gifts. Except as otherwise
84 provided in subsection (2)(a) of this section for individuals,
85 contributions or gifts made by corporations within the taxable
86 year to corporations, organizations, associations or institutions,
87 including Community Chest funds, foundations and trusts created
88 solely and exclusively for religious, charitable, scientific or
89 educational purposes, or for the prevention of cruelty to children
90 or animals, no part of the net earnings of which inure to the
91 benefit of any private stockholder or individual. This deduction
92 shall be allowed in an amount not to exceed twenty percent (20%)
93 of the net income. Such contributions or gifts shall be allowable
94 as deductions only if verified under rules and regulations
95 prescribed by the commissioner, with the approval of the Governor.
96 Contributions made in any form other than cash shall be allowed
97 as a deduction, subject to the limitations herein provided, in an

98 amount equal to the actual market value of the contributions at
99 the time the contribution is actually made and consummated.

100 (i) Reserve funds - insurance companies. In the case
101 of insurance companies the net additions required by law to be
102 made within the taxable year to reserve funds when such reserve
103 funds are maintained for the purpose of liquidating policies at
104 maturity.

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

108 (k) Contributions to employee pension plans.
109 Contributions made by an employer to a plan or a trust forming
110 part of a pension plan, stock bonus plan, disability or
111 death-benefit plan, or profit-sharing plan of such employer for
112 the exclusive benefit of some or all of his, their, or its
113 employees, or their beneficiaries, shall be deductible from his,
114 their, or its income only to the extent that, and for the taxable
115 year in which, the contribution is deductible for federal income
116 tax purposes under the Internal Revenue Code of 1986 and any other
117 provisions of similar purport in the Internal Revenue Laws of the
118 United States, and the rules, regulations, rulings and
119 determinations promulgated thereunder, provided that:

120 (i) The plan or trust be irrevocable.

121 (ii) The plan or trust constitute a part of a
122 pension plan, stock bonus plan, disability or death-benefit plan,
123 or profit-sharing plan for the exclusive benefit of some or all of
124 the employer's employees and/or officers, or their beneficiaries,
125 for the purpose of distributing the corpus and income of the plan
126 or trust to such employees and/or officers, or their
127 beneficiaries.

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

131 Contributions to all plans or to all trusts of real or
132 personal property (or real and personal property combined) or to
133 insured plans created under a retirement plan for which provision
134 has been made under the laws of the United States of America,
135 making such contributions deductible from income for federal
136 income tax purposes, shall be deductible only to the same extent
137 under the Income Tax Laws of the State of Mississippi.

138 (1) Net operating loss carrybacks and carryovers. A
139 net operating loss for any taxable year ending after December 31,
140 1993, and taxable years thereafter, shall be a net operating loss
141 carryback to each of the three (3) taxable years preceding the
142 taxable year of the loss. If the net operating loss for any
143 taxable year is not exhausted by carrybacks to the three (3)
144 taxable years preceding the taxable year of the loss, then there
145 shall be a net operating loss carryover to each of the fifteen
146 (15) taxable years following the taxable year of the loss
147 beginning with any taxable year after December 31, 1991.

148 For any taxable year ending after December 31, 1997, the
149 period for net operating loss carrybacks and net operating loss
150 carryovers shall be the same as those established by the Internal
151 Revenue Code and the rules, regulations, rulings and
152 determinations promulgated thereunder.

153 The term "net operating loss," for the purposes of this
154 paragraph, shall be the excess of the deductions allowed over the
155 gross income; provided, however, the following deductions shall
156 not be allowed in computing same:

157 (i) No net operating loss deduction shall be
158 allowed.

159 (ii) No personal exemption deduction shall be
160 allowed.

161 (iii) Allowable deductions which are not
162 attributable to taxpayer's trade or business shall be allowed only
163 to the extent of the amount of gross income not derived from such

164 trade or business.

165 Any taxpayer entitled to a carryback period as provided by
166 this paragraph may elect to relinquish the entire carryback period
167 with respect to a net operating loss for any taxable year ending
168 after December 31, 1991. The election shall be made in the manner
169 prescribed by the State Tax Commission and shall be made by the
170 due date, including extensions of time, for filing the taxpayer's
171 return for the taxable year of the net operating loss for which
172 the election is to be in effect. The election, once made for any
173 taxable year, shall be irrevocable for that taxable year.

174 (m) Amortization of pollution or environmental control
175 facilities.

176 Allowance of deduction. Every taxpayer, at his election,
177 shall be entitled to a deduction for pollution or environmental
178 control facilities to the same extent as that allowed under the
179 Internal Revenue Code and the rules, regulations, rulings and
180 determinations promulgated thereunder.

181 (n) Dividend distributions - real estate investment
182 trusts. "Real estate investment trust" (hereinafter referred to
183 as REIT) shall have the meaning ascribed to such term in Section
184 856 of the federal Internal Revenue Code of 1986, as amended. A
185 REIT is allowed a dividend distributed deduction if the dividend
186 distributions meet the requirements of Section 857 or are
187 otherwise deductible under Section 858 or 860, federal Internal
188 Revenue Code of 1986, as amended. * * * In addition:

189 (i) A dividend distributed deduction shall only be
190 allowed for dividends paid by a publicly traded REIT. A qualified
191 REIT subsidiary shall be allowed a dividend distributed deduction
192 if its owner is a publicly traded REIT.

193 (ii) Income generated from real estate contributed
194 or sold to a REIT by a shareholder or related party shall not give
195 rise to a dividend distributed deduction, unless the shareholder
196 or related party would have received the dividend distributed

197 deduction under this chapter.

198 (iii) A holding corporation receiving a dividend
199 from a REIT shall not be allowed the deduction in Section
200 27-7-15(4)(t).

201 (iv) Any REIT not allowed the dividend distributed
202 deduction in the federal Internal Revenue Code of 1986, as
203 amended, shall not be allowed a dividend distributed deduction
204 under this chapter.

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

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

210 (a) The amount allowable for individual nonbusiness
211 itemized deductions for federal income tax purposes, except the
212 deduction for state income taxes paid, where the individual is
213 eligible to elect, for the taxable year, to itemize deductions on
214 his federal return; or

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

220 (i) Three Thousand Four Hundred Dollars
221 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
222 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
223 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
224 in the case of married individuals filing a joint or combined
225 return;

226 (ii) One Thousand Seven Hundred Dollars
227 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
228 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
229 Three Hundred Dollars (\$2,300.00) for each calendar year

230 thereafter in the case of married individuals filing separate
231 returns;

232 (iii) Three Thousand Four Hundred Dollars
233 (\$3,400.00) in the case of a head of family; or

234 (iv) Two Thousand Three Hundred Dollars
235 (\$2,300.00) in the case of an individual who is not married.

236 In the case of a husband and wife living together, having
237 separate incomes, and filing combined returns, the standard
238 deduction authorized may be divided in any manner they choose. In
239 the case of separate returns by a husband and wife, the standard
240 deduction shall not be allowed to either if the taxable income of
241 one of the spouses is determined without regard to the standard
242 deduction.

243 (c) A nonresident individual shall be allowed the same
244 individual nonbusiness deductions as are authorized for resident
245 individuals in paragraph (a) or (b) of this subsection; however,
246 the nonresident individual is entitled only to that proportion of
247 the individual nonbusiness deductions as his net income from
248 sources within the State of Mississippi bears to his total or
249 entire net income from all sources.

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

252 SECTION 2. This act shall take effect and be in force from
253 and after January 1, 2000.