SENATE BILL NO. 2544

AN ACT TO AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN SELF-EMPLOYMENT TAXES ASSESSED AGAINST SELF-EMPLOYED INDIVIDUALS SHALL BE ALLOWED AS INDIVIDUAL NONBUSINESS DEDUCTIONS IN COMPUTING TAXABLE INCOME; AND FOR RELATED PURPOSES.

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

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

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

(1) Business deductions.

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

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

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

(d) Business losses.

(i) Losses sustained during the taxable year not compensated for by insurance or otherwise, if incurred in trade or business, or nonbusiness transactions entered into for profit.
(ii) Limitations on losses from passive activities and rental real estate shall conform to the provisions of the Internal Revenue Code of 1986.

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

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

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

(h) Contributions or gifts. Except as otherwise provided in subsection (2)(a) of this section for individuals, contributions or gifts made by corporations within the taxable year 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. This deduction shall be allowed in an amount not to exceed twenty percent (20%) of the net income. Such contributions or gifts shall be allowable
as deductions only if verified under rules and regulations
prescribed by the commissioner, with the approval of the Governor.
Contributions made in any form other than cash shall be allowed as
a deduction, subject to the limitations herein provided, in an
amount equal to the actual market value of the contributions at
the time the contribution is actually made and consummated.

(i) Reserve funds - insurance companies. In the case
of insurance companies 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.

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

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

(i) The plan or trust be irrevocable.

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

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

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

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

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

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

(i) No net operating loss deduction shall be allowed.
(ii) No personal exemption deduction shall be
allowed.

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

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

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

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

(i) A dividend distributed deduction shall only be
allowed for dividends paid by a publicly traded REIT. A qualified
REIT subsidiary shall be allowed a dividend distributed deduction
if its owner is a publicly traded REIT.
(ii) Income generated from real estate contributed or sold to a REIT by a shareholder or related party shall not give rise to a dividend distributed deduction, unless the shareholder or related party would have received the dividend distributed deduction under this chapter.

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

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

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

(o) Contributions to College Savings Trust Fund Accounts. Contributions or payments to a Mississippi Affordable College Savings Program account are deductible as provided under Section 37-155-17. Payments made under a prepaid tuition contract entered into under the Mississippi Prepaid Affordable College Tuition Program are deductible as provided under Section 37-155-17.

(2) Individual nonbusiness deductions.

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

(ii) In the case of a self-employed individual, an amount equal to one-half (1/2) of the self-employment taxes imposed on such individual for the taxable year. However, for the 2000 calendar year, the deduction authorized by this subparagraph...
(ii) shall not exceed one-third (1/3) of the one-half (1/2) of such self-employment taxes; for the 2001 calendar year, the deduction authorized by this subparagraph (ii) shall not exceed two-thirds (2/3) of the one-half (1/2) of such self-employment taxes; and for the 2002 calendar year, and each calendar year thereafter, the deduction authorized by this subparagraph (ii) shall be an amount equal to one-half (1/2) of such self-employment taxes.

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

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

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

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

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

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

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

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

SECTION 2. This act shall take effect and be in force from
and after July 1, 2001.