

By: Senator(s) Hewes, Robertson

To: Finance

SENATE BILL NO. 2544

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

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

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

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

11 (1) **Business deductions.**

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

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

29 indebtedness for the purchase of tax-free bonds, or any stocks,
30 the dividends from which are nontaxable under the provisions of
31 this article; provided, however, in the case of securities
32 dealers, interest payments or accruals on loans, the proceeds of
33 which are used to purchase tax-exempt securities, shall be
34 deductible if income from otherwise tax-free securities is
35 reported as income. Investment interest expense shall be limited
36 to investment income. Interest expense incurred for the purchase
37 of treasury stock, to pay dividends, or incurred as a result of an
38 undercapitalized affiliated corporation may not be deducted unless
39 an ordinary and necessary business purpose can be established to
40 the satisfaction of the commissioner. For the purposes of this
41 paragraph, the phrase "interest upon the indebtedness for the
42 purchase of tax-free bonds" applies only to the indebtedness
43 incurred for the purpose of directly purchasing tax-free bonds and
44 does not apply to any other indebtedness incurred in the regular
45 course of the taxpayer's business. Any corporation, association,
46 organization or other entity taxable under Section 27-7-23(c)
47 shall allocate interest expense as provided in Section
48 27-7-23(c)(4)(H).

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

58 (d) Business losses.

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

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

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

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

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

84 (h) Contributions or gifts. Except as otherwise
85 provided in subsection (2)(a) of this section for individuals,
86 contributions or gifts made by corporations within the taxable
87 year to corporations, organizations, associations or institutions,
88 including Community Chest funds, foundations and trusts created
89 solely and exclusively for religious, charitable, scientific or
90 educational purposes, or for the prevention of cruelty to children
91 or animals, no part of the net earnings of which inure to the
92 benefit of any private stockholder or individual. This deduction
93 shall be allowed in an amount not to exceed twenty percent (20%)
94 of the net income. Such contributions or gifts shall be allowable

95 as deductions only if verified under rules and regulations
96 prescribed by the commissioner, with the approval of the Governor.
97 Contributions made in any form other than cash shall be allowed as
98 a deduction, subject to the limitations herein provided, in an
99 amount equal to the actual market value of the contributions at
100 the time the contribution is actually made and consummated.

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

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

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

121 (i) The plan or trust be irrevocable.

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

127 or trust to such employees and/or officers, or their
128 beneficiaries.

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

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

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

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

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

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

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

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

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

175 (m) Amortization of pollution or environmental control
176 facilities. Allowance of deduction. Every taxpayer, at his
177 election, shall be entitled to a deduction for pollution or
178 environmental control facilities to the same extent as that
179 allowed under the Internal Revenue Code and the rules,
180 regulations, rulings and 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 (o) Contributions to College Savings Trust Fund
210 Accounts. Contributions or payments to a Mississippi Affordable
211 College Savings Program account are deductible as provided under
212 Section 37-155-113. Payments made under a prepaid tuition
213 contract entered into under the Mississippi Prepaid Affordable
214 College Tuition Program are deductible as provided under Section
215 37-155-17.

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

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

222 (ii) In the case of a self-employed individual, an
223 amount equal to one-half (1/2) of the self-employment taxes
224 imposed on such individual for the taxable year. However, for the
225 2000 calendar year, the deduction authorized by this subparagraph

226 (ii) shall not exceed one-third (1/3) of the one-half (1/2) of
227 such self-employment taxes; for the 2001 calendar year, the
228 deduction authorized by this subparagraph (ii) shall not exceed
229 two-thirds (2/3) of the one-half (1/2) of such self-employment
230 taxes; and for the 2002 calendar year, and each calendar year
231 thereafter, the deduction authorized by this subparagraph (ii)
232 shall be an amount equal to one-half (1/2) of such self-employment
233 taxes.

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

239 (i) Three Thousand Four Hundred Dollars
240 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
241 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
242 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
243 in the case of married individuals filing a joint or combined
244 return;

245 (ii) One Thousand Seven Hundred Dollars
246 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
247 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
248 Three Hundred Dollars (\$2,300.00) for each calendar year
249 thereafter in the case of married individuals filing separate
250 returns;

251 (iii) Three Thousand Four Hundred Dollars
252 (\$3,400.00) in the case of a head of family; or

253 (iv) Two Thousand Three Hundred Dollars
254 (\$2,300.00) in the case of an individual who is not married.

255 In the case of a husband and wife living together, having
256 separate incomes, and filing combined returns, the standard
257 deduction authorized may be divided in any manner they choose. In
258 the case of separate returns by a husband and wife, the standard

259 deduction shall not be allowed to either if the taxable income of
260 one of the spouses is determined without regard to the standard
261 deduction.

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

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

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