

By: Representative McCoy

To: Ways and Means

HOUSE BILL NO. 1838

1 AN ACT TO LEVY A 3% TAX UPON AMOUNTS THAT ARE PAID TO PATRONS
2 BY GAMING ESTABLISHMENTS LOCATED IN THIS STATE THAT ARE NOT
3 LICENSED UNDER THE PROVISIONS OF THE GAMING CONTROL ACT; TO
4 PROVIDE THAT THE TAX SHALL BE COLLECTED BY THE GAMING
5 ESTABLISHMENTS AND REMITTED TO THE STATE TAX COMMISSION; TO AMEND
6 SECTION 27-7-15, MISSISSIPPI CODE OF 1972, TO EXCLUDE FROM THE
7 DEFINITION OF "GROSS INCOME" AMOUNTS THAT ARE SUBJECT TO SUCH TAX;
8 TO AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, TO PROVIDE
9 THAT INDIVIDUALS MAY NOT DEDUCT GAMING LOSSES FROM SUCH
10 ESTABLISHMENTS OR THE AMOUNT OF THE TAXES COLLECTED PURSUANT TO
11 THIS ACT; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** (1) There is hereby levied and assessed upon
14 patrons of gaming establishments located in this state that are
15 not licensed under the provisions of the Mississippi Gaming
16 Control Act, a tax of three percent (3%) of the amounts that are
17 paid or credited to such patrons by the gaming establishment,
18 which tax is the same in kind and rate as has heretofore been
19 imposed pursuant to Section 27-7-901 upon the patrons of gaming
20 establishments which are licensed under the Mississippi Gaming
21 Control Act. The legal incidence and duty to pay such taxes shall
22 fall upon the patron. The assessment of such tax is subject to
23 any exemptions as may exist under federal or state law, or both.
24 The State Tax Commission may enter into tax collection agreements
25 regarding this tax.

26 (2) As used in this section, "amounts that are paid or
27 credited" means amounts or credits that are subject to the
28 withholding or reporting requirements of the Internal Revenue
29 Code.



30 (3) No credit shall be allowed under the Income Tax Law of
31 1952 for the tax collected by gaming establishments pursuant to
32 this section.

33 **SECTION 2.** Section 27-7-15, Mississippi Code of 1972, is
34 amended as follows:

35 **[* * * Through June 30, 2003, this section shall read as**
36 **follows:]**

37 27-7-15. (1) For the purposes of this article, except as
38 otherwise provided, the term "gross income" means and includes the
39 income of a taxpayer derived from salaries, wages, fees or
40 compensation for service, of whatever kind and in whatever form
41 paid, including income from governmental agencies and subdivisions
42 thereof; or from professions, vocations, trades, businesses,
43 commerce or sales, or renting or dealing in property, or
44 reacquired property; also from annuities, interest, rents,
45 dividends, securities, insurance premiums, reinsurance premiums,
46 considerations for supplemental insurance contracts, or the
47 transaction of any business carried on for gain or profit, or
48 gains, or profits, and income derived from any source whatever and
49 in whatever form paid. The amount of all such items of income
50 shall be included in the gross income for the taxable year in
51 which received by the taxpayer. The amount by which an eligible
52 employee's salary is reduced pursuant to a salary reduction
53 agreement authorized under Section 25-17-5 shall be excluded from
54 the term "gross income" within the meaning of this article.

55 (2) In determining gross income for the purpose of this
56 section, the following, under regulations prescribed by the
57 commissioner, shall be applicable:

58 (a) **Dealers in property.** Federal rules, regulations
59 and revenue procedures shall be followed with respect to
60 installment sales unless a transaction results in the shifting of
61 income from inside the state to outside the state.

62 (b) **Casual sales of property.**



63 (i) Prior to January 1, 2001, federal rules,
64 regulations and revenue procedures shall be followed with respect
65 to installment sales except they shall be applied and administered
66 as if House Resolution No. 3594, the Installment Tax Correction
67 Act of 2000 of the 106th Congress had not been enacted. This
68 provision will generally affect taxpayers, reporting on the
69 accrual method of accounting, entering into installment note
70 agreements on or after December 17, 1999. Any gain or profit
71 resulting from the casual sale of property will be recognized in
72 the year of sale.

73 (ii) From and after January 1, 2001, federal
74 rules, regulations and revenue procedures shall be followed with
75 respect to installment sales except as provided in this
76 subparagraph (ii). Gain or profit from the casual sale of
77 property shall be recognized in the year of sale. When a taxpayer
78 recognizes gain on the casual sale of property in which the gain
79 is deferred for federal income tax purposes, a taxpayer may elect
80 to defer the payment of tax resulting from the gain as allowed and
81 to the extent provided under regulations prescribed by the
82 commissioner. If the payment of the tax is made on a deferred
83 basis, the tax shall be computed based on the applicable rate for
84 the income reported in the year the payment is made. Except as
85 otherwise provided in subparagraph (iii) of this paragraph (b),
86 deferring the payment of the tax shall not affect the liability
87 for the tax. If at any time the installment note is sold,
88 contributed, transferred or disposed of in any manner and for any
89 purpose by the original note holder, or the original note holder
90 is merged, liquidated, dissolved or withdrawn from this state,
91 then all deferred tax payments under this section shall
92 immediately become due and payable.

93 (iii) If the selling price of the property is
94 reduced by any alteration in the terms of an installment note,
95 including default by the purchaser, the gain to be recognized is



96 recomputed based on the adjusted selling price in the same manner
97 as for federal income tax purposes. The tax on this amount, less
98 the previously paid tax on the recognized gain, is payable over
99 the period of the remaining installments. If the tax on the
100 previously recognized gain has been paid in full to this state,
101 the return on which the payment was made may be amended for this
102 purpose only. The statute of limitations in Section 27-7-49 shall
103 not bar an amended return for this purpose.

104 (c) **Reserves of insurance companies.** In the case of
105 insurance companies, any amounts in excess of the legally required
106 reserves shall be included as gross income.

107 (d) **Affiliated companies or persons.** As regards sales,
108 exchanges or payments for services from one to another of
109 affiliated companies or persons or under other circumstances where
110 the relation between the buyer and seller is such that gross
111 proceeds from the sale or the value of the exchange or the payment
112 for services are not indicative of the true value of the subject
113 matter of the sale, exchange or payment for services, the
114 commissioner shall prescribe uniform and equitable rules for
115 determining the true value of the gross income, gross sales,
116 exchanges or payment for services, or require consolidated returns
117 of affiliates.

118 (e) **Alimony and separate maintenance payments.** The
119 federal rules, regulations and revenue procedures in determining
120 the deductibility and taxability of alimony payments shall be
121 followed in this state.

122 (f) **Reimbursement for expenses of moving.** There shall
123 be included in gross income (as compensation for services) any
124 amount received or accrued, directly or indirectly, by an
125 individual as a payment for or reimbursement of expenses of moving
126 from one residence to another residence which is attributable to
127 employment or self-employment.



128 (3) In the case of taxpayers other than residents, gross
129 income includes gross income from sources within this state.

130 (4) The words "gross income" do not include the following
131 items of income which shall be exempt from taxation under this
132 article:

133 (a) The proceeds of life insurance policies and
134 contracts paid upon the death of the insured. However, the income
135 from the proceeds of such policies or contracts shall be included
136 in the gross income.

137 (b) The amount received by the insured as a return of
138 premium or premiums paid by him under life insurance policies,
139 endowment, or annuity contracts, either during the term or at
140 maturity or upon surrender of the contract.

141 (c) The value of property acquired by gift, bequest,
142 devise or descent, but the income from such property shall be
143 included in the gross income.

144 (d) Interest upon the obligations of the United States
145 or its possessions, or securities issued under the provisions of
146 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the
147 War Finance Corporation, or obligations of the State of
148 Mississippi or political subdivisions thereof.

149 (e) The amounts received through accident or health
150 insurance as compensation for personal injuries or sickness, plus
151 the amount of any damages received for such injuries or such
152 sickness or injuries, or through the War Risk Insurance Act, or
153 any law for the benefit or relief of injured or disabled members
154 of the military or naval forces of the United States.

155 (f) Income received by any religious denomination or by
156 any institution or trust for moral or mental improvements,
157 religious, Bible, tract, charitable, benevolent, fraternal,
158 missionary, hospital, infirmary, educational, scientific,
159 literary, library, patriotic, historical or cemetery purposes or



160 for two (2) or more of such purposes, if such income be used
161 exclusively for carrying out one or more of such purposes.

162 (g) Income received by a domestic corporation which is
163 "taxable in another state" as this term is defined in this
164 article, derived from business activity conducted outside this
165 state. Domestic corporations taxable both within and without the
166 state shall determine Mississippi income on the same basis as
167 provided for foreign corporations under the provisions of this
168 article.

169 (h) In case of insurance companies, there shall be
170 excluded from gross income such portion of actual premiums
171 received from an individual policyholder as is paid back or
172 credited to or treated as an abatement of premiums of such
173 policyholder within the taxable year.

174 (i) Income from dividends that has already borne a tax
175 as dividend income under the provisions of this article, when such
176 dividends may be specifically identified in the possession of the
177 recipient.

178 (j) Amounts paid by the United States to a person as
179 added compensation for hazardous duty pay as a member of the Armed
180 Forces of the United States in a combat zone designated by
181 Executive Order of the President of the United States.

182 (k) Amounts received as retirement allowances,
183 pensions, annuities or optional retirement allowances paid under
184 the federal Social Security Act, the Railroad Retirement Act, the
185 Federal Civil Service Retirement Act, or any other retirement
186 system of the United States government, retirement allowances paid
187 under the Mississippi Public Employees' Retirement System,
188 Mississippi Highway Safety Patrol Retirement System or any other
189 retirement system of the State of Mississippi or any political
190 subdivision thereof. The exemption allowed under this paragraph
191 (k) shall be available to the spouse or other beneficiary at the
192 death of the primary retiree.



193 (1) Amounts received as retirement allowances,
194 pensions, annuities or optional retirement allowances paid by any
195 public or governmental retirement system not designated in
196 paragraph (k) or any private retirement system or plan of which
197 the recipient was a member at any time during the period of his
198 employment. Amounts received as a distribution under a Roth
199 Individual Retirement Account shall be treated in the same manner
200 as provided under the Internal Revenue Code of 1986, as amended.
201 The exemption allowed under this paragraph (1) shall be available
202 to the spouse or other beneficiary at the death of the primary
203 retiree.

204 (m) Compensation not to exceed the aggregate sum of
205 Five Thousand Dollars (\$5,000.00) for any taxable year received by
206 a member of the National Guard or Reserve Forces of the United
207 States as payment for inactive duty training, active duty training
208 and state active duty.

209 (n) Compensation received for active service as a
210 member below the grade of commissioned officer and so much of the
211 compensation as does not exceed the aggregate sum of Five Hundred
212 Dollars (\$500.00) per month received for active service as a
213 commissioned officer in the Armed Forces of the United States for
214 any month during any part of which such members of the Armed
215 Forces (i) served in a combat zone as designated by Executive
216 Order of the President of the United States; or (ii) was
217 hospitalized as a result of wounds, disease or injury incurred
218 while serving in such combat zone.

219 (o) The proceeds received from federal and state
220 forestry incentives programs.

221 (p) The amount representing the difference between the
222 increase of gross income derived from sales for export outside the
223 United States as compared to the preceding tax year wherein gross
224 income from export sales was highest, and the net increase in
225 expenses attributable to such increased exports. In the absence



226 of direct accounting the ratio of net profits to total sales may
227 be applied to the increase in export sales. This paragraph (p)
228 shall only apply to businesses located in this state engaging in
229 the international export of Mississippi goods and services. Such
230 goods or services shall have at least fifty percent (50%) of value
231 added at a location in Mississippi.

232 (q) Amounts paid by the federal government for the
233 construction of soil conservation systems as required by a
234 conservation plan adopted pursuant to 16 USCS 3801 et seq.

235 (r) The amount deposited in a medical savings account,
236 and any interest accrued thereon, that is a part of a medical
237 savings account program as specified in the Medical Savings
238 Account Act under Sections 71-9-1 through 71-9-9; provided,
239 however, that any amount withdrawn from such account for purposes
240 other than paying eligible medical expense or to procure health
241 coverage, shall be included in gross income.

242 (s) Amounts paid by the Mississippi Soil and Water
243 Conservation Commission from the Mississippi Soil and Water
244 Cost-Share Program for the installation of water quality best
245 management practices.

246 (t) Dividends received by a holding corporation, as
247 defined in Section 27-13-1, from a subsidiary corporation, as
248 defined in Section 27-13-1.

249 (u) Interest, dividends, gains or income of any kind on
250 any account in the Mississippi Affordable College Savings Trust
251 Fund, as established in Sections 37-155-101 through 37-155-125, to
252 the extent that such amounts remain on deposit in the MACS Trust
253 Fund or are withdrawn pursuant to a qualified withdrawal, as
254 defined in Section 37-155-105.

255 (v) Interest, dividends or gains accruing on the
256 payments made pursuant to a prepaid tuition contract, as provided
257 for in Section 37-155-17.



258 (w) Income resulting from transactions with a related
259 member where the related member subject to tax under this chapter
260 was required to, and did in fact, add back the expense of such
261 transactions as required by Section 27-7-17(2). Under no
262 circumstances may the exclusion from income exceed the deduction
263 add-back of the related member, nor shall the exclusion apply to
264 any income otherwise excluded under this chapter.

265 (x) Amounts that are subject to the tax levied pursuant
266 to Section 27-7-901, and are paid to patrons by gaming
267 establishments licensed under the Mississippi Gaming Control Act.

268 (y) Amounts that are subject to the tax collected
269 pursuant to Section 1 of House Bill No. , 2002 Regular
270 Session, and are paid to patrons by gaming establishments not
271 licensed under the Mississippi Gaming Control Act.

272 (5) **Prisoners of war, missing in action-taxable status.**

273 (a) **Members of the Armed Forces.** Gross income does not
274 include compensation received for active service as a member of
275 the Armed Forces of the United States for any month during any
276 part of which such member is in a missing status, as defined in
277 paragraph (d) of this subsection, during the Vietnam Conflict as a
278 result of such conflict.

279 (b) **Civilian employees.** Gross income does not include
280 compensation received for active service as an employee for any
281 month during any part of which such employee is in a missing
282 status during the Vietnam Conflict as a result of such conflict.

283 (c) **Period of conflict.** For the purpose of this
284 subsection, the Vietnam Conflict began February 28, 1961, and ends
285 on the date designated by the President by Executive Order as the
286 date of the termination of combatant activities in Vietnam. For
287 the purpose of this subsection, an individual is in a missing
288 status as a result of the Vietnam Conflict if immediately before
289 such status began he was performing service in Vietnam or was
290 performing service in Southeast Asia in direct support of military



291 operations in Vietnam. "Southeast Asia" as used in this paragraph
292 is defined to include Cambodia, Laos, Thailand and waters adjacent
293 thereto.

294 (d) "Missing status" means the status of an employee or
295 member of the Armed Forces who is in active service and is
296 officially carried or determined to be absent in a status of (i)
297 missing; (ii) missing in action; (iii) interned in a foreign
298 country; (iv) captured, beleaguered or besieged by a hostile
299 force; or (v) detained in a foreign country against his will; but
300 does not include the status of an employee or member of the Armed
301 Forces for a period during which he is officially determined to be
302 absent from his post of duty without authority.

303 (e) "Active service" means active federal service by an
304 employee or member of the Armed Forces of the United States in an
305 active duty status.

306 (f) "Employee" means one who is a citizen or national
307 of the United States or an alien admitted to the United States for
308 permanent residence and is a resident of the State of Mississippi
309 and is employed in or under a federal executive agency or
310 department of the Armed Forces.

311 (g) "Compensation" means (i) basic pay; (ii) special
312 pay; (iii) incentive pay; (iv) basic allowance for quarters; (v)
313 basic allowance for subsistence; and (vi) station per diem
314 allowances for not more than ninety (90) days.

315 (h) If refund or credit of any overpayment of tax for
316 any taxable year resulting from the application of subsection (5)
317 of this section is prevented by the operation of any law or rule
318 of law, such refund or credit of such overpayment of tax may,
319 nevertheless, be made or allowed if claim therefor is filed with
320 the State Tax Commission within three (3) years after the date of
321 the enactment of this subsection.

322 (i) The provisions of this subsection shall be
323 effective for taxable years ending on or after February 28, 1961.



324 (6) A shareholder of an S corporation, as defined in Section
325 27-8-3(1)(g), shall take into account the income, loss, deduction
326 or credit of the S corporation only to the extent provided in
327 Section 27-8-7(2).

328 **[From and after July 1, 2003, this section shall read as**
329 **follows:]**

330 27-7-15. (1) For the purposes of this article, except as
331 otherwise provided, the term "gross income" means and includes the
332 income of a taxpayer derived from salaries, wages, fees or
333 compensation for service, of whatever kind and in whatever form
334 paid, including income from governmental agencies and subdivisions
335 thereof; or from professions, vocations, trades, businesses,
336 commerce or sales, or renting or dealing in property, or
337 reacquired property; also from annuities, interest, rents,
338 dividends, securities, insurance premiums, reinsurance premiums,
339 considerations for supplemental insurance contracts, or the
340 transaction of any business carried on for gain or profit, or
341 gains, or profits, and income derived from any source whatever and
342 in whatever form paid. The amount of all such items of income
343 shall be included in the gross income for the taxable year in
344 which received by the taxpayer. The amount by which an eligible
345 employee's salary is reduced pursuant to a salary reduction
346 agreement authorized under Section 25-17-5 shall be excluded from
347 the term "gross income" within the meaning of this article.

348 (2) In determining gross income for the purpose of this
349 section, the following, under regulations prescribed by the
350 commissioner, shall be applicable:

351 (a) **Dealers in property.** Federal rules, regulations
352 and revenue procedures shall be followed with respect to
353 installment sales.

354 (b) **Casual sales of property.** Federal rules,
355 regulations and revenue procedures shall be followed with respect
356 to installment sales.



357 (i) The term "installment sale" means a
358 disposition of property where at least one (1) payment is to be
359 received after the close of the taxable year in which the
360 disposition occurs.

361 (ii) The term "installment method" means a method
362 under which the income recognized for any taxable year from the
363 disposition is that proportion of the payments received in that
364 year which the gross profit (realized or to be realized when
365 payment is completed) bears to the total contract price.

366 (c) **Reserves of insurance companies.** In the case of
367 insurance companies, any amounts in excess of the legally required
368 reserves shall be included as gross income.

369 (d) **Affiliated companies or persons.** As regards sales,
370 exchanges or payments for services from one to another of
371 affiliated companies or persons or under other circumstances where
372 the relation between the buyer and seller is such that gross
373 proceeds from the sale or the value of the exchange or the payment
374 for services are not indicative of the true value of the subject
375 matter of the sale, exchange or payment for services, the
376 commissioner shall prescribe uniform and equitable rules for
377 determining the true value of the gross income, gross sales,
378 exchanges or payment for services, or require consolidated returns
379 of affiliates.

380 (e) **Alimony and separate maintenance payments.** The
381 federal rules, regulations and revenue procedures in determining
382 the deductibility and taxability of alimony payments shall be
383 followed in this state.

384 (f) **Reimbursement for expenses of moving.** There shall
385 be included in gross income (as compensation for services) any
386 amount received or accrued, directly or indirectly, by an
387 individual as a payment for or reimbursement of expenses of moving
388 from one residence to another residence which is attributable to
389 employment or self-employment.



390 (3) In the case of taxpayers other than residents, gross
391 income includes gross income from sources within this state.

392 (4) The words "gross income" do not include the following
393 items of income which shall be exempt from taxation under this
394 article:

395 (a) The proceeds of life insurance policies and
396 contracts paid upon the death of the insured. However, the income
397 from the proceeds of such policies or contracts shall be included
398 in the gross income.

399 (b) The amount received by the insured as a return of
400 premium or premiums paid by him under life insurance policies,
401 endowment, or annuity contracts, either during the term or at
402 maturity or upon surrender of the contract.

403 (c) The value of property acquired by gift, bequest,
404 devise or descent, but the income from such property shall be
405 included in the gross income.

406 (d) Interest upon the obligations of the United States
407 or its possessions, or securities issued under the provisions of
408 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the
409 War Finance Corporation, or obligations of the State of
410 Mississippi or political subdivisions thereof.

411 (e) The amounts received through accident or health
412 insurance as compensation for personal injuries or sickness, plus
413 the amount of any damages received for such injuries or such
414 sickness or injuries, or through the War Risk Insurance Act, or
415 any law for the benefit or relief of injured or disabled members
416 of the military or naval forces of the United States.

417 (f) Income received by any religious denomination or by
418 any institution or trust for moral or mental improvements,
419 religious, Bible, tract, charitable, benevolent, fraternal,
420 missionary, hospital, infirmary, educational, scientific,
421 literary, library, patriotic, historical or cemetery purposes or



422 for two (2) or more of such purposes, if such income be used
423 exclusively for carrying out one or more of such purposes.

424 (g) Income received by a domestic corporation which is
425 "taxable in another state" as this term is defined in this
426 article, derived from business activity conducted outside this
427 state. Domestic corporations taxable both within and without the
428 state shall determine Mississippi income on the same basis as
429 provided for foreign corporations under the provisions of this
430 article.

431 (h) In case of insurance companies, there shall be
432 excluded from gross income such portion of actual premiums
433 received from an individual policyholder as is paid back or
434 credited to or treated as an abatement of premiums of such
435 policyholder within the taxable year.

436 (i) Income from dividends that has already borne a tax
437 as dividend income under the provisions of this article, when such
438 dividends may be specifically identified in the possession of the
439 recipient.

440 (j) Amounts paid by the United States to a person as
441 added compensation for hazardous duty pay as a member of the Armed
442 Forces of the United States in a combat zone designated by
443 Executive Order of the President of the United States.

444 (k) Amounts received as retirement allowances,
445 pensions, annuities or optional retirement allowances paid under
446 the federal Social Security Act, the Railroad Retirement Act, the
447 Federal Civil Service Retirement Act, or any other retirement
448 system of the United States government, retirement allowances paid
449 under the Mississippi Public Employees' Retirement System,
450 Mississippi Highway Safety Patrol Retirement System or any other
451 retirement system of the State of Mississippi or any political
452 subdivision thereof. The exemption allowed under this paragraph

453 (k) shall be available to the spouse or other beneficiary at the
454 death of the primary retiree.



455 (1) Amounts received as retirement allowances,
456 pensions, annuities or optional retirement allowances paid by any
457 public or governmental retirement system not designated in
458 paragraph (k) or any private retirement system or plan of which
459 the recipient was a member at any time during the period of his
460 employment. Amounts received as a distribution under a Roth
461 individual retirement account shall be treated in the same manner
462 as provided under the Internal Revenue Code of 1986, as amended.
463 The exemption allowed under this paragraph (1) shall be available
464 to the spouse or other beneficiary at the death of the primary
465 retiree.

466 (m) Compensation not to exceed the aggregate sum of
467 Five Thousand Dollars (\$5,000.00) for any taxable year received by
468 a member of the National Guard or Reserve Forces of the United
469 States as payment for inactive duty training, active duty training
470 and state active duty.

471 (n) Compensation received for active service as a
472 member below the grade of commissioned officer and so much of the
473 compensation as does not exceed the aggregate sum of Five Hundred
474 Dollars (\$500.00) per month received for active service as a
475 commissioned officer in the Armed Forces of the United States for
476 any month during any part of which such members of the Armed
477 Forces (i) served in a combat zone as designated by Executive
478 Order of the President of the United States; or (ii) was
479 hospitalized as a result of wounds, disease or injury incurred
480 while serving in such combat zone.

481 (o) The proceeds received from federal and state
482 forestry incentives programs.

483 (p) The amount representing the difference between the
484 increase of gross income derived from sales for export outside the
485 United States as compared to the preceding tax year wherein gross
486 income from export sales was highest, and the net increase in
487 expenses attributable to such increased exports. In the absence



488 of direct accounting the ratio of net profits to total sales may
489 be applied to the increase in export sales. This paragraph (p)
490 shall only apply to businesses located in this state engaging in
491 the international export of Mississippi goods and services. Such
492 goods or services shall have at least fifty percent (50%) of value
493 added at a location in Mississippi.

494 (q) Amounts paid by the federal government for the
495 construction of soil conservation systems as required by a
496 conservation plan adopted pursuant to 16 USCS 3801 et seq.

497 (r) The amount deposited in a medical savings account,
498 and any interest accrued thereon, that is a part of a medical
499 savings account program as specified in the Medical Savings
500 Account Act under Sections 71-9-1 through 71-9-9; provided,
501 however, that any amount withdrawn from such account for purposes
502 other than paying eligible medical expense or to procure health
503 coverage, shall be included in gross income.

504 (s) Amounts paid by the Mississippi Soil and Water
505 Conservation Commission from the Mississippi Soil and Water
506 Cost-Share Program for the installation of water quality best
507 management practices.

508 (t) Dividends received by a holding corporation, as
509 defined in Section 27-13-1, from a subsidiary corporation, as
510 defined in Section 27-13-1.

511 (u) Interest, dividends, gains or income of any kind on
512 any account in the Mississippi Affordable College Savings Trust
513 Fund, as established in Sections 37-155-101 through 37-155-125, to
514 the extent that such amounts remain on deposit in the MACS Trust
515 Fund or are withdrawn pursuant to a qualified withdrawal, as
516 defined in Section 37-155-105.

517 (v) Interest, dividends or gains accruing on the
518 payments made pursuant to a prepaid tuition contract, as provided
519 for in Section 37-155-17.



520 (w) Amounts that are subject to the tax levied pursuant
521 to Section 27-7-901, and are paid to patrons by gaming
522 establishments licensed under the Mississippi Gaming Control Act.

523 (x) Amounts that are subject to the tax collected
524 pursuant to Section 1 of House Bill No. , 2002 Regular
525 Session, and are paid to patrons by gaming establishments not
526 licensed under the Mississippi Gaming Control Act.

527 (5) **Prisoners of war, missing in action-taxable status.**

528 (a) **Members of the Armed Forces.** Gross income does not
529 include compensation received for active service as a member of
530 the Armed Forces of the United States for any month during any
531 part of which such member is in a missing status, as defined in
532 paragraph (d) of this subsection, during the Vietnam Conflict as a
533 result of such conflict.

534 (b) **Civilian employees.** Gross income does not include
535 compensation received for active service as an employee for any
536 month during any part of which such employee is in a missing
537 status during the Vietnam Conflict as a result of such conflict.

538 (c) **Period of conflict.** For the purpose of this
539 subsection, the Vietnam Conflict began February 28, 1961, and ends
540 on the date designated by the President by Executive Order as the
541 date of the termination of combatant activities in Vietnam. For
542 the purpose of this subsection, an individual is in a missing
543 status as a result of the Vietnam Conflict if immediately before
544 such status began he was performing service in Vietnam or was
545 performing service in Southeast Asia in direct support of military
546 operations in Vietnam. "Southeast Asia" as used in this paragraph
547 is defined to include Cambodia, Laos, Thailand and waters adjacent
548 thereto.

549 (d) "Missing status" means the status of an employee or
550 member of the Armed Forces who is in active service and is
551 officially carried or determined to be absent in a status of (i)
552 missing; (ii) missing in action; (iii) interned in a foreign



553 country; (iv) captured, beleaguered or besieged by a hostile
554 force; or (v) detained in a foreign country against his will; but
555 does not include the status of an employee or member of the Armed
556 Forces for a period during which he is officially determined to be
557 absent from his post of duty without authority.

558 (e) "Active service" means active federal service by an
559 employee or member of the Armed Forces of the United States in an
560 active duty status.

561 (f) "Employee" means one who is a citizen or national
562 of the United States or an alien admitted to the United States for
563 permanent residence and is a resident of the State of Mississippi
564 and is employed in or under a federal executive agency or
565 department of the Armed Forces.

566 (g) "Compensation" means (i) basic pay; (ii) special
567 pay; (iii) incentive pay; (iv) basic allowance for quarters; (v)
568 basic allowance for subsistence; and (vi) station per diem
569 allowances for not more than ninety (90) days.

570 (h) If refund or credit of any overpayment of tax for
571 any taxable year resulting from the application of subsection (5)
572 of this section is prevented by the operation of any law or rule
573 of law, such refund or credit of such overpayment of tax may,
574 nevertheless, be made or allowed if claim therefor is filed with
575 the State Tax Commission within three (3) years after the date of
576 the enactment of this subsection.

577 (i) The provisions of this subsection shall be
578 effective for taxable years ending on or after February 28, 1961.

579 (6) A shareholder of an S corporation, as defined in Section
580 27-8-3(1)(g), shall take into account the income, loss, deduction
581 or credit of the S corporation only to the extent provided in
582 Section 27-8-7(2).

583 **SECTION 3.** Section 27-7-17, Mississippi Code of 1972, is
584 amended as follows:



585 [*** * *** Through June 30, 2003, this section shall read as
586 **follows:]**

587 27-7-17. In computing taxable income, there shall be allowed
588 as deductions:

589 (1) **Business deductions.**

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

605 (b) **Interest.** All interest paid or accrued during the
606 taxable year on business indebtedness, except interest upon the
607 indebtedness for the purchase of tax-free bonds, or any stocks,
608 the dividends from which are nontaxable under the provisions of
609 this article; provided, however, in the case of securities
610 dealers, interest payments or accruals on loans, the proceeds of
611 which are used to purchase tax-exempt securities, shall be
612 deductible if income from otherwise tax-free securities is
613 reported as income. Investment interest expense shall be limited
614 to investment income. Interest expense incurred for the purchase
615 of treasury stock, to pay dividends, or incurred as a result of an
616 undercapitalized affiliated corporation may not be deducted unless
617 an ordinary and necessary business purpose can be established to



618 the satisfaction of the commissioner. For the purposes of this
619 paragraph, the phrase "interest upon the indebtedness for the
620 purchase of tax-free bonds" applies only to the indebtedness
621 incurred for the purpose of directly purchasing tax-free bonds and
622 does not apply to any other indebtedness incurred in the regular
623 course of the taxpayer's business. Any corporation, association,
624 organization or other entity taxable under Section 27-7-23(c)
625 shall allocate interest expense as provided in Section
626 27-7-23(c)(3)(I).

627 (c) **Taxes.** Taxes paid or accrued within the taxable
628 year, except state and federal income taxes, excise taxes based on
629 or measured by net income, estate and inheritance taxes, gift
630 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
631 use taxes unless incurred as an item of expense in a trade or
632 business or in the production of taxable income. In the case of
633 an individual, taxes permitted as an itemized deduction under the
634 provisions of subsection (3)(a) of this section are to be claimed
635 thereunder.

636 (d) **Business losses.**

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

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

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

649 (f) **Depreciation.** A reasonable allowance for
650 exhaustion, wear and tear of property used in the trade or



651 business, or rental property, and depreciation upon buildings
652 based upon their reasonable value as of March 16, 1912, if
653 acquired prior thereto, and upon cost if acquired subsequent to
654 that date.

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

662 (h) **Contributions or gifts.** Except as otherwise
663 provided in subsection (3)(a) of this section for individuals,
664 contributions or gifts made by corporations within the taxable
665 year to corporations, organizations, associations or institutions,
666 including Community Chest funds, foundations and trusts created
667 solely and exclusively for religious, charitable, scientific or
668 educational purposes, or for the prevention of cruelty to children
669 or animals, no part of the net earnings of which inure to the
670 benefit of any private stockholder or individual. This deduction
671 shall be allowed in an amount not to exceed twenty percent (20%)
672 of the net income. Such contributions or gifts shall be allowable
673 as deductions only if verified under rules and regulations
674 prescribed by the commissioner, with the approval of the Governor.
675 Contributions made in any form other than cash shall be allowed as
676 a deduction, subject to the limitations herein provided, in an
677 amount equal to the actual market value of the contributions at
678 the time the contribution is actually made and consummated.

679 (i) **Reserve funds - insurance companies.** In the case
680 of insurance companies the net additions required by law to be
681 made within the taxable year to reserve funds when such reserve
682 funds are maintained for the purpose of liquidating policies at
683 maturity.



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

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

699 (i) The plan or trust be irrevocable.

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

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

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



717 (1) **Net operating loss carrybacks and carryovers.** A
718 net operating loss for any taxable year ending after December 31,
719 1993, and taxable years thereafter, shall be a net operating loss
720 carryback to each of the three (3) taxable years preceding the
721 taxable year of the loss. If the net operating loss for any
722 taxable year is not exhausted by carrybacks to the three (3)
723 taxable years preceding the taxable year of the loss, then there
724 shall be a net operating loss carryover to each of the fifteen
725 (15) taxable years following the taxable year of the loss
726 beginning with any taxable year after December 31, 1991.

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

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

736 (i) No net operating loss deduction shall be
737 allowed.

738 (ii) No personal exemption deduction shall be
739 allowed.

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

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



750 return for the taxable year of the net operating loss for which
751 the election is to be in effect. The election, once made for any
752 taxable year, shall be irrevocable for that taxable year.

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

759 (n) **Dividend distributions - real estate investment**
760 **trusts.** "Real estate investment trust" (hereinafter referred to
761 as REIT) shall have the meaning ascribed to such term in Section
762 856 of the federal Internal Revenue Code of 1986, as amended. A
763 REIT is allowed a dividend distributed deduction if the dividend
764 distributions meet the requirements of Section 857 or are
765 otherwise deductible under Section 858 or 860, federal Internal
766 Revenue Code of 1986, as amended. In addition:

767 (i) A dividend distributed deduction shall only be
768 allowed for dividends paid by a publicly traded REIT. A qualified
769 REIT subsidiary shall be allowed a dividend distributed deduction
770 if its owner is a publicly traded REIT.

771 (ii) Income generated from real estate contributed
772 or sold to a REIT by a shareholder or related party shall not give
773 rise to a dividend distributed deduction, unless the shareholder
774 or related party would have received the dividend distributed
775 deduction under this chapter.

776 (iii) A holding corporation receiving a dividend
777 from a REIT shall not be allowed the deduction in Section
778 27-7-15(4)(t).

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



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

787 (○) **Contributions to college savings trust fund**
788 **accounts.** Contributions or payments to a Mississippi Affordable
789 College Savings Program account are deductible as provided under
790 Section 37-155-113. Payments made under a prepaid tuition
791 contract entered into under the Mississippi Prepaid Affordable
792 College Tuition Program are deductible as provided under Section
793 37-155-17.

794 (2) **Restrictions on the deductibility of certain intangible**
795 **expenses and interest expenses with a related member.**

796 (a) As used in this subsection (2):

797 (i) "Intangible expenses and costs" include:

798 1. Expenses, losses and costs for, related
799 to, or in connection directly or indirectly with the direct or
800 indirect acquisition, use, maintenance or management, ownership,
801 sale, exchange or any other disposition of intangible property to
802 the extent such amounts are allowed as deductions or costs in
803 determining taxable income under this chapter;

804 2. Expenses or losses related to or incurred
805 in connection directly or indirectly with factoring transactions
806 or discounting transactions;

807 3. Royalty, patent, technical and copyright
808 fees;

809 4. Licensing fees; and

810 5. Other similar expenses and costs.

811 (ii) "Intangible property" means patents, patent
812 applications, trade names, trademarks, service marks, copyrights
813 and similar types of intangible assets.

814 (iii) "Interest expenses and cost" means amounts
815 directly or indirectly allowed as deductions for purposes of



816 determining taxable income under this chapter to the extent such
817 interest expenses and costs are directly or indirectly for,
818 related to, or in connection with the direct or indirect
819 acquisition maintenance, management, ownership, sale, exchange or
820 disposition of intangible property.

821 (iv) "Related member" means an entity or person
822 that, with respect to the taxpayer during all or any portion of
823 the taxable year, is a related entity, a component member as
824 defined in the Internal Revenue Code, or is an entity or a person
825 to or from whom there is attribution of stock ownership in
826 accordance with Section 1563(e) of the Internal Revenue Code.

827 (v) "Related entity" means:

828 1. A stockholder who is an individual or a
829 member of the stockholder's family, as defined in regulations
830 prescribed by the commissioner, if the stockholder and the members
831 of the stockholder's family own, directly, indirectly,
832 beneficially or constructively, in the aggregate, at least fifty
833 percent (50%) of the value of the taxpayer's outstanding stock;

834 2. A stockholder, or a stockholder's
835 partnership, limited liability company, estate, trust or
836 corporation, if the stockholder and the stockholder's
837 partnerships, limited liability companies, estates, trusts and
838 corporations own, directly, indirectly, beneficially or
839 constructively, in the aggregate, at least fifty percent (50%) of
840 the value of the taxpayer's outstanding stock;

841 3. A corporation, or a party related to the
842 corporation in a manner that would require an attribution of stock
843 from the corporation to the party or from the party to the
844 corporation, if the taxpayer owns, directly, indirectly,
845 beneficially or constructively, at least fifty percent (50%) of
846 the value of the corporation's outstanding stock under regulation
847 prescribed by the commissioner;



848 4. Any entity or person which would be a
849 related member under this section if the taxpayer were considered
850 a corporation for purposes of this section.

851 (b) In computing net income, a taxpayer shall add back
852 otherwise deductible interest expenses and costs and intangible
853 expenses and costs directly or indirectly paid, accrued to or
854 incurred, in connection directly or indirectly with one or more
855 direct or indirect transactions with one or more related members.

856 (c) The adjustments required by this subsection shall
857 not apply to such portion of interest expenses and costs and
858 intangible expenses and costs that the taxpayer can establish
859 meets one (1) of the following:

860 (i) The related member directly or indirectly
861 paid, accrued or incurred such portion to a person during the same
862 income year who is not a related member; or

863 (ii) The transaction giving rise to the interest
864 expenses and costs or intangible expenses and costs between the
865 taxpayer and related member was done primarily for a valid
866 business purpose other than the avoidance of taxes, and the
867 related member is not primarily engaged in the acquisition, use,
868 maintenance or management, ownership, sale, exchange or any other
869 disposition of intangible property.

870 (d) Nothing in this subsection shall require a taxpayer
871 to add to its net income more than once any amount of interest
872 expenses and costs or intangible expenses and costs that the
873 taxpayer pays, accrues or incurs to a related member.

874 (e) The commissioner may prescribe such regulations as
875 necessary or appropriate to carry out the purposes of this
876 subsection, including, but not limited to, clarifying definitions
877 of terms, rules of stock attribution, factoring and discount
878 transactions.

879 (3) **Individual nonbusiness deductions.**



880 (a) The amount allowable for individual nonbusiness
881 itemized deductions for federal income tax purposes where the
882 individual is eligible to elect, for the taxable year, to itemize
883 deductions on his federal return except the following:

884 (i) The deduction for state income taxes paid;

885 (ii) The deduction for gaming losses from gaming
886 establishments * * *;

887 (iii) The deduction for taxes collected by
888 licensed gaming establishments pursuant to Section 27-7-901;

889 (iv) The deduction for taxes collected by gaming
890 establishments pursuant to Section 1 of House Bill No. , 2002
891 Regular Session.

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

897 (i) Three Thousand Four Hundred Dollars
898 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
899 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
900 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
901 in the case of married individuals filing a joint or combined
902 return;

903 (ii) One Thousand Seven Hundred Dollars
904 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
905 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
906 Three Hundred Dollars (\$2,300.00) for each calendar year
907 thereafter in the case of married individuals filing separate
908 returns;

909 (iii) Three Thousand Four Hundred Dollars
910 (\$3,400.00) in the case of a head of family; or

911 (iv) Two Thousand Three Hundred Dollars
912 (\$2,300.00) in the case of an individual who is not married.



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

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

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

929 **[From and after July 1, 2003, this section shall read as**
930 **follows:]**

931 27-7-17. In computing taxable income, there shall be allowed
932 as deductions:

933 (1) **Business deductions.**

934 (a) **Business expenses.** All the ordinary and necessary
935 expenses paid or incurred during the taxable year in carrying on
936 any trade or business, including a reasonable allowance for
937 salaries or other compensation for personal services actually
938 rendered; nonreimbursable traveling expenses incident to current
939 employment, including a reasonable amount expended for meals and
940 lodging while away from home in the pursuit of a trade or
941 business; and rentals or other payments required to be made as a
942 condition of the continued use or possession, for purposes of the
943 trade or business of property to which the taxpayer has not taken
944 or is not taking title or in which he had no equity. Expense
945 incurred in connection with earning and distributing nontaxable



946 income is not an allowable deduction. Limitations on
947 entertainment expenses shall conform to the provisions of the
948 Internal Revenue Code of 1986.

949 (b) **Interest.** All interest paid or accrued during the
950 taxable year on business indebtedness, except interest upon the
951 indebtedness for the purchase of tax-free bonds, or any stocks,
952 the dividends from which are nontaxable under the provisions of
953 this article; provided, however, in the case of securities
954 dealers, interest payments or accruals on loans, the proceeds of
955 which are used to purchase tax-exempt securities, shall be
956 deductible if income from otherwise tax-free securities is
957 reported as income. Investment interest expense shall be limited
958 to investment income. Interest expense incurred for the purchase
959 of treasury stock, to pay dividends, or incurred as a result of an
960 undercapitalized affiliated corporation may not be deducted unless
961 an ordinary and necessary business purpose can be established to
962 the satisfaction of the commissioner. For the purposes of this
963 paragraph, the phrase "interest upon the indebtedness for the
964 purchase of tax-free bonds" applies only to the indebtedness
965 incurred for the purpose of directly purchasing tax-free bonds and
966 does not apply to any other indebtedness incurred in the regular
967 course of the taxpayer's business. Any corporation, association,
968 organization or other entity taxable under Section 27-7-23(c)
969 shall allocate interest expense as provided in Section
970 27-7-23(c)(4)(H).

971 (c) **Taxes.** Taxes paid or accrued within the taxable
972 year, except state and federal income taxes, excise taxes based on
973 or measured by net income, estate and inheritance taxes, gift
974 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
975 use taxes unless incurred as an item of expense in a trade or
976 business or in the production of taxable income. In the case of
977 an individual, taxes permitted as an itemized deduction under the



978 provisions of subsection (2)(a) of this section are to be claimed
979 thereunder.

980 (d) **Business losses.**

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

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

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

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

999 (g) **Depletion.** In the case of mines, oil and gas
1000 wells, other natural deposits and timber, a reasonable allowance
1001 for depletion and for depreciation of improvements, based upon
1002 cost, including cost of development, not otherwise deducted, or
1003 fair market value as of March 16, 1912, if acquired prior to that
1004 date, such allowance to be made upon regulations prescribed by the
1005 commissioner, with the approval of the Governor.

1006 (h) **Contributions or gifts.** Except as otherwise
1007 provided in subsection (2)(a) of this section for individuals,
1008 contributions or gifts made by corporations within the taxable
1009 year to corporations, organizations, associations or institutions,
1010 including Community Chest funds, foundations and trusts created



1011 solely and exclusively for religious, charitable, scientific or
1012 educational purposes, or for the prevention of cruelty to children
1013 or animals, no part of the net earnings of which inure to the
1014 benefit of any private stockholder or individual. This deduction
1015 shall be allowed in an amount not to exceed twenty percent (20%)
1016 of the net income. Such contributions or gifts shall be allowable
1017 as deductions only if verified under rules and regulations
1018 prescribed by the commissioner, with the approval of the Governor.
1019 Contributions made in any form other than cash shall be allowed as
1020 a deduction, subject to the limitations herein provided, in an
1021 amount equal to the actual market value of the contributions at
1022 the time the contribution is actually made and consummated.

1023 (i) **Reserve funds - insurance companies.** In the case
1024 of insurance companies the net additions required by law to be
1025 made within the taxable year to reserve funds when such reserve
1026 funds are maintained for the purpose of liquidating policies at
1027 maturity.

1028 (j) **Annuity income.** The sums, other than dividends,
1029 paid within the taxpayer year on policy or annuity contracts when
1030 such income has been included in gross income.

1031 (k) **Contributions to employee pension plans.**
1032 Contributions made by an employer to a plan or a trust forming
1033 part of a pension plan, stock bonus plan, disability or
1034 death-benefit plan, or profit-sharing plan of such employer for
1035 the exclusive benefit of some or all of his, their, or its
1036 employees, or their beneficiaries, shall be deductible from his,
1037 their, or its income only to the extent that, and for the taxable
1038 year in which, the contribution is deductible for federal income
1039 tax purposes under the Internal Revenue Code of 1986 and any other
1040 provisions of similar purport in the Internal Revenue Laws of the
1041 United States, and the rules, regulations, rulings and
1042 determinations promulgated thereunder, provided that:

1043 (i) The plan or trust be irrevocable.



1044 (ii) The plan or trust constitute a part of a
1045 pension plan, stock bonus plan, disability or death-benefit plan,
1046 or profit-sharing plan for the exclusive benefit of some or all of
1047 the employer's employees and/or officers, or their beneficiaries,
1048 for the purpose of distributing the corpus and income of the plan
1049 or trust to such employees and/or officers, or their
1050 beneficiaries.

1051 (iii) No part of the corpus or income of the plan
1052 or trust can be used for purposes other than for the exclusive
1053 benefit of employees and/or officers, or their beneficiaries.

1054 Contributions to all plans or to all trusts of real or
1055 personal property (or real and personal property combined) or to
1056 insured plans created under a retirement plan for which provision
1057 has been made under the laws of the United States of America,
1058 making such contributions deductible from income for federal
1059 income tax purposes, shall be deductible only to the same extent
1060 under the Income Tax Laws of the State of Mississippi.

1061 (1) **Net operating loss carrybacks and carryovers.** A
1062 net operating loss for any taxable year ending after December 31,
1063 1993, and taxable years thereafter, shall be a net operating loss
1064 carryback to each of the three (3) taxable years preceding the
1065 taxable year of the loss. If the net operating loss for any
1066 taxable year is not exhausted by carrybacks to the three (3)
1067 taxable years preceding the taxable year of the loss, then there
1068 shall be a net operating loss carryover to each of the fifteen
1069 (15) taxable years following the taxable year of the loss
1070 beginning with any taxable year after December 31, 1991.

1071 For any taxable year ending after December 31, 1997, the
1072 period for net operating loss carrybacks and net operating loss
1073 carryovers shall be the same as those established by the Internal
1074 Revenue Code and the rules, regulations, rulings and
1075 determinations promulgated thereunder.



1076 The term "net operating loss," for the purposes of this
1077 paragraph, shall be the excess of the deductions allowed over the
1078 gross income; provided, however, the following deductions shall
1079 not be allowed in computing same:

1080 (i) No net operating loss deduction shall be
1081 allowed.

1082 (ii) No personal exemption deduction shall be
1083 allowed.

1084 (iii) Allowable deductions which are not
1085 attributable to taxpayer's trade or business shall be allowed only
1086 to the extent of the amount of gross income not derived from such
1087 trade or business.

1088 Any taxpayer entitled to a carryback period as provided by
1089 this paragraph may elect to relinquish the entire carryback period
1090 with respect to a net operating loss for any taxable year ending
1091 after December 31, 1991. The election shall be made in the manner
1092 prescribed by the State Tax Commission and shall be made by the
1093 due date, including extensions of time, for filing the taxpayer's
1094 return for the taxable year of the net operating loss for which
1095 the election is to be in effect. The election, once made for any
1096 taxable year, shall be irrevocable for that taxable year.

1097 (m) **Amortization of pollution or environmental control**
1098 **facilities.** Allowance of deduction. Every taxpayer, at his
1099 election, shall be entitled to a deduction for pollution or
1100 environmental control facilities to the same extent as that
1101 allowed under the Internal Revenue Code and the rules,
1102 regulations, rulings and determinations promulgated thereunder.

1103 (n) **Dividend distributions - real estate investment**
1104 **trusts.** "Real estate investment trust" (hereinafter referred to
1105 as REIT) shall have the meaning ascribed to such term in Section
1106 856 of the federal Internal Revenue Code of 1986, as amended. A
1107 REIT is allowed a dividend distributed deduction if the dividend
1108 distributions meet the requirements of Section 857 or are



1109 otherwise deductible under Section 858 or 860, federal Internal
1110 Revenue Code of 1986, as amended. In addition:

1111 (i) A dividend distributed deduction shall only be
1112 allowed for dividends paid by a publicly traded REIT. A qualified
1113 REIT subsidiary shall be allowed a dividend distributed deduction
1114 if its owner is a publicly traded REIT.

1115 (ii) Income generated from real estate contributed
1116 or sold to a REIT by a shareholder or related party shall not give
1117 rise to a dividend distributed deduction, unless the shareholder
1118 or related party would have received the dividend distributed
1119 deduction under this chapter.

1120 (iii) A holding corporation receiving a dividend
1121 from a REIT shall not be allowed the deduction in Section
1122 27-7-15(4)(t).

1123 (iv) Any REIT not allowed the dividend distributed
1124 deduction in the federal Internal Revenue Code of 1986, as
1125 amended, shall not be allowed a dividend distributed deduction
1126 under this chapter.

1127 The commissioner is authorized to promulgate rules and
1128 regulations consistent with the provisions in Section 269 of the
1129 federal Internal Revenue Code of 1986, as amended, so as to
1130 prevent the evasion or avoidance of state income tax.

1131 (o) **Contributions to college savings trust fund**
1132 **accounts.** Contributions or payments to a Mississippi Affordable
1133 College Savings Program account are deductible as provided under
1134 Section 37-155-113. Payments made under a prepaid tuition
1135 contract entered into under the Mississippi Prepaid Affordable
1136 College Tuition Program are deductible as provided under Section
1137 37-155-17.

1138 (2) **Individual nonbusiness deductions.**

1139 (a) The amount allowable for individual nonbusiness
1140 itemized deductions for federal income tax purposes where the



1141 individual is eligible to elect, for the taxable year, to itemize
1142 deductions on his federal return except the following:

1143 (i) The deduction for state income taxes paid;

1144 (ii) The deduction for gaming losses from gaming
1145 establishments * * *;

1146 (iii) The deduction for taxes collected by
1147 licensed gaming establishments pursuant to Section 27-7-901;

1148 (iv) The deduction for taxes collected by gaming
1149 establishments pursuant to Section 1 of House Bill No. , 2002
1150 Regular Session.

1151 (b) In lieu of the individual nonbusiness itemized
1152 deductions authorized in paragraph (a), for all purposes other
1153 than ordinary and necessary expenses paid or incurred during the
1154 taxable year in carrying on any trade or business, an optional
1155 standard deduction of:

1156 (i) Three Thousand Four Hundred Dollars
1157 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
1158 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
1159 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
1160 in the case of married individuals filing a joint or combined
1161 return;

1162 (ii) One Thousand Seven Hundred Dollars
1163 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
1164 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
1165 Three Hundred Dollars (\$2,300.00) for each calendar year
1166 thereafter in the case of married individuals filing separate
1167 returns;

1168 (iii) Three Thousand Four Hundred Dollars
1169 (\$3,400.00) in the case of a head of family; or

1170 (iv) Two Thousand Three Hundred Dollars
1171 (\$2,300.00) in the case of an individual who is not married.

1172 In the case of a husband and wife living together, having
1173 separate incomes, and filing combined returns, the standard



1174 deduction authorized may be divided in any manner they choose. In
1175 the case of separate returns by a husband and wife, the standard
1176 deduction shall not be allowed to either if the taxable income of
1177 one of the spouses is determined without regard to the standard
1178 deduction.

1179 (c) A nonresident individual shall be allowed the same
1180 individual nonbusiness deductions as are authorized for resident
1181 individuals in paragraph (a) or (b) of this subsection; however,
1182 the nonresident individual is entitled only to that proportion of
1183 the individual nonbusiness deductions as his net income from
1184 sources within the State of Mississippi bears to his total or
1185 entire net income from all sources.

1186 (3) Nothing in this section shall permit the same item to be
1187 deducted more than once, either in fact or in effect.

1188 **SECTION 4.** This act shall take effect and be in force from
1189 and after January 1, 2002.

