

By: Senator(s) Minor

To: Finance

SENATE BILL NO. 3113  
(As Sent to Governor)

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 MISSISSIPPI GAMING CONTROL  
4 ACT; TO 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 PAID BY SUCH  
10 ESTABLISHMENTS OR THE AMOUNT OF THE TAXES COLLECTED PURSUANT TO  
11 THIS ACT; TO PROVIDE THAT NET OPERATING LOSSES FOR ANY TAXABLE  
12 YEAR ENDING AFTER DECEMBER 31, 2001, SHALL BE A NET OPERATING LOSS  
13 CARRYBACK FOR EACH OF THE TWO TAXABLE YEARS PRECEDING THE LOSS; TO  
14 PROVIDE THAT IF THE NET OPERATING LOSS FOR ANY TAXABLE YEAR IS NOT  
15 EXHAUSTED BY CARRYBACKS TO SUCH PRECEDING YEARS, THEN THERE SHALL  
16 BE A NET OPERATING LOSS CARRYOVER TO EACH OF THE TWENTY TAXABLE  
17 YEARS FOLLOWING THE TAXABLE YEAR OF THE LOSS; AND FOR RELATED  
18 PURPOSES.

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

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

33 (2) As used in this section, "amounts that are paid or  
34 credited" means amounts or credits that are subject to the



35 withholding or reporting requirements of the Internal Revenue  
36 Code.

37 (3) No credit shall be allowed under the Income Tax Law of  
38 1952 for the tax collected by gaming establishments pursuant to  
39 this section.

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

42 [ \* \* \* **Through June 30, 2003, this section shall read as**  
43 **follows:]**

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

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

65 (a) **Dealers in property.** Federal rules, regulations  
66 and revenue procedures shall be followed with respect to



67 installment sales unless a transaction results in the shifting of  
68 income from inside the state to outside the state.

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

70 (i) Prior to January 1, 2001, federal rules,  
71 regulations and revenue procedures shall be followed with respect  
72 to installment sales except they shall be applied and administered  
73 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the  
74 106th Congress, had not been enacted. This provision will  
75 generally affect taxpayers, reporting on the accrual method of  
76 accounting, entering into installment note agreements on or after  
77 December 17, 1999. Any gain or profit resulting from the casual  
78 sale of property will be recognized in the year of sale.

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



99 (iii) If the selling price of the property is  
100 reduced by any alteration in the terms of an installment note,  
101 including default by the purchaser, the gain to be recognized is  
102 recomputed based on the adjusted selling price in the same manner  
103 as for federal income tax purposes. The tax on this amount, less  
104 the previously paid tax on the recognized gain, is payable over  
105 the period of the remaining installments. If the tax on the  
106 previously recognized gain has been paid in full to this state,  
107 the return on which the payment was made may be amended for this  
108 purpose only. The statute of limitations in Section 27-7-49 shall  
109 not bar an amended return for this purpose.

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

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

124 (e) **Alimony and separate maintenance payments.** The  
125 federal rules, regulations and revenue procedures in determining  
126 the deductibility and taxability of alimony payments shall be  
127 followed in this state.

128 (f) **Reimbursement for expenses of moving.** There shall  
129 be included in gross income (as compensation for services) any  
130 amount received or accrued, directly or indirectly, by an  
131 individual as a payment for or reimbursement of expenses of moving



132 from one residence to another residence which is attributable to  
133 employment or self-employment.

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

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

139 (a) The proceeds of life insurance policies and  
140 contracts paid upon the death of the insured. However, the income  
141 from the proceeds of such policies or contracts shall be included  
142 in the gross income.

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

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

150 (d) Interest upon the obligations of the United States  
151 or its possessions, or securities issued under the provisions of  
152 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the  
153 War Finance Corporation, or obligations of the State of  
154 Mississippi or political subdivisions thereof.

155 (e) The amounts received through accident or health  
156 insurance as compensation for personal injuries or sickness, plus  
157 the amount of any damages received for such injuries or such  
158 sickness or injuries, or through the War Risk Insurance Act, or  
159 any law for the benefit or relief of injured or disabled members  
160 of the military or naval forces of the United States.

161 (f) Income received by any religious denomination or by  
162 any institution or trust for moral or mental improvements,  
163 religious, Bible, tract, charitable, benevolent, fraternal,  
164 missionary, hospital, infirmary, educational, scientific,



165 literary, library, patriotic, historical or cemetery purposes or  
166 for two (2) or more of such purposes, if such income be used  
167 exclusively for carrying out one or more of such purposes.

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

175 (h) In case of insurance companies, there shall be  
176 excluded from gross income such portion of actual premiums  
177 received from an individual policyholder as is paid back or  
178 credited to or treated as an abatement of premiums of such  
179 policyholder within the taxable year.

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

184 (j) Amounts paid by the United States to a person as  
185 added compensation for hazardous duty pay as a member of the Armed  
186 Forces of the United States in a combat zone designated by  
187 Executive Order of the President of the United States.

188 (k) Amounts received as retirement allowances,  
189 pensions, annuities or optional retirement allowances paid under  
190 the federal Social Security Act, the Railroad Retirement Act, the  
191 Federal Civil Service Retirement Act, or any other retirement  
192 system of the United States government, retirement allowances paid  
193 under the Mississippi Public Employees' Retirement System,  
194 Mississippi Highway Safety Patrol Retirement System or any other  
195 retirement system of the State of Mississippi or any political  
196 subdivision thereof. The exemption allowed under this paragraph



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

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

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

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

225 (o) The proceeds received from federal and state  
226 forestry incentives programs.

227 (p) The amount representing the difference between the  
228 increase of gross income derived from sales for export outside the  
229 United States as compared to the preceding tax year wherein gross



230 income from export sales was highest, and the net increase in  
231 expenses attributable to such increased exports. In the absence  
232 of direct accounting the ratio of net profits to total sales may  
233 be applied to the increase in export sales. This paragraph (p)  
234 shall only apply to businesses located in this state engaging in  
235 the international export of Mississippi goods and services. Such  
236 goods or services shall have at least fifty percent (50%) of value  
237 added at a location in Mississippi.

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

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

248 (s) Amounts paid by the Mississippi Soil and Water  
249 Conservation Commission from the Mississippi Soil and Water  
250 Cost-Share Program for the installation of water quality best  
251 management practices.

252 (t) Dividends received by a holding corporation, as  
253 defined in Section 27-13-1, from a subsidiary corporation, as  
254 defined in Section 27-13-1.

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



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

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

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

274 (y) Amounts that are subject to the tax levied pursuant  
275 to Section 1 of Senate Bill No. 3113, 2002 Regular Session, and  
276 are paid to patrons by gaming establishments not licensed under  
277 the Mississippi Gaming Control Act.

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

279 (a) **Members of the Armed Forces.** Gross income does not  
280 include compensation received for active service as a member of  
281 the Armed Forces of the United States for any month during any  
282 part of which such member is in a missing status, as defined in  
283 paragraph (d) of this subsection, during the Vietnam Conflict as a  
284 result of such conflict.

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

289 (c) **Period of conflict.** For the purpose of this  
290 subsection, the Vietnam Conflict began February 28, 1961, and ends  
291 on the date designated by the President by Executive Order as the  
292 date of the termination of combatant activities in Vietnam. For  
293 the purpose of this subsection, an individual is in a missing



294 status as a result of the Vietnam Conflict if immediately before  
295 such status began he was performing service in Vietnam or was  
296 performing service in Southeast Asia in direct support of military  
297 operations in Vietnam. "Southeast Asia," as used in this  
298 paragraph, is defined to include Cambodia, Laos, Thailand and  
299 waters adjacent thereto.

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

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

312 (f) "Employee" means one who is a citizen or national  
313 of the United States or an alien admitted to the United States for  
314 permanent residence and is a resident of the State of Mississippi  
315 and is employed in or under a federal executive agency or  
316 department of the Armed Forces.

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

321 (h) If refund or credit of any overpayment of tax for  
322 any taxable year resulting from the application of subsection (5)  
323 of this section is prevented by the operation of any law or rule  
324 of law, such refund or credit of such overpayment of tax may,  
325 nevertheless, be made or allowed if claim therefor is filed with



326 the State Tax Commission within three (3) years after the date of  
327 the enactment of this subsection.

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

330 (6) A shareholder of an S corporation, as defined in Section  
331 27-8-3(1)(g), shall take into account the income, loss, deduction  
332 or credit of the S corporation only to the extent provided in  
333 Section 27-8-7(2).

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

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

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



357           (a) **Dealers in property.** Federal rules, regulations  
358 and revenue procedures shall be followed with respect to  
359 installment sales.

360           (b) **Casual sales of property.** Federal rules,  
361 regulations and revenue procedures shall be followed with respect  
362 to installment sales.

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

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

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

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

386           (e) **Alimony and separate maintenance payments.** The  
387 federal rules, regulations and revenue procedures in determining  
388 the deductibility and taxability of alimony payments shall be  
389 followed in this state.



390           (f) **Reimbursement for expenses of moving.** There shall  
391 be included in gross income (as compensation for services) any  
392 amount received or accrued, directly or indirectly, by an  
393 individual as a payment for or reimbursement of expenses of moving  
394 from one residence to another residence which is attributable to  
395 employment or self-employment.

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

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

401           (a) The proceeds of life insurance policies and  
402 contracts paid upon the death of the insured. However, the income  
403 from the proceeds of such policies or contracts shall be included  
404 in the gross income.

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

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

412           (d) Interest upon the obligations of the United States  
413 or its possessions, or securities issued under the provisions of  
414 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the  
415 War Finance Corporation, or obligations of the State of  
416 Mississippi or political subdivisions thereof.

417           (e) The amounts received through accident or health  
418 insurance as compensation for personal injuries or sickness, plus  
419 the amount of any damages received for such injuries or such  
420 sickness or injuries, or through the War Risk Insurance Act, or  
421 any law for the benefit or relief of injured or disabled members  
422 of the military or naval forces of the United States.



423           (f) Income received by any religious denomination or by  
424 any institution or trust for moral or mental improvements,  
425 religious, Bible, tract, charitable, benevolent, fraternal,  
426 missionary, hospital, infirmary, educational, scientific,  
427 literary, library, patriotic, historical or cemetery purposes or  
428 for two (2) or more of such purposes, if such income be used  
429 exclusively for carrying out one or more of such purposes.

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

437           (h) In case of insurance companies, there shall be  
438 excluded from gross income such portion of actual premiums  
439 received from an individual policyholder as is paid back or  
440 credited to or treated as an abatement of premiums of such  
441 policyholder within the taxable year.

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

446           (j) Amounts paid by the United States to a person as  
447 added compensation for hazardous duty pay as a member of the Armed  
448 Forces of the United States in a combat zone designated by  
449 Executive Order of the President of the United States.

450           (k) Amounts received as retirement allowances,  
451 pensions, annuities or optional retirement allowances paid under  
452 the federal Social Security Act, the Railroad Retirement Act, the  
453 Federal Civil Service Retirement Act, or any other retirement  
454 system of the United States government, retirement allowances paid  
455 under the Mississippi Public Employees' Retirement System,



456 Mississippi Highway Safety Patrol Retirement System or any other  
457 retirement system of the State of Mississippi or any political  
458 subdivision thereof. The exemption allowed under this paragraph  
459 (k) shall be available to the spouse or other beneficiary at the  
460 death of the primary retiree.

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

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

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

487 (o) The proceeds received from federal and state  
488 forestry incentives programs.



489           (p) The amount representing the difference between the  
490 increase of gross income derived from sales for export outside the  
491 United States as compared to the preceding tax year wherein gross  
492 income from export sales was highest, and the net increase in  
493 expenses attributable to such increased exports. In the absence  
494 of direct accounting the ratio of net profits to total sales may  
495 be applied to the increase in export sales. This paragraph (p)  
496 shall only apply to businesses located in this state engaging in  
497 the international export of Mississippi goods and services. Such  
498 goods or services shall have at least fifty percent (50%) of value  
499 added at a location in Mississippi.

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

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

510           (s) Amounts paid by the Mississippi Soil and Water  
511 Conservation Commission from the Mississippi Soil and Water  
512 Cost-Share Program for the installation of water quality best  
513 management practices.

514           (t) Dividends received by a holding corporation, as  
515 defined in Section 27-13-1, from a subsidiary corporation, as  
516 defined in Section 27-13-1.

517           (u) Interest, dividends, gains or income of any kind on  
518 any account in the Mississippi Affordable College Savings Trust  
519 Fund, as established in Sections 37-155-101 through 37-155-125, to  
520 the extent that such amounts remain on deposit in the MACS Trust



521 Fund or are withdrawn pursuant to a qualified withdrawal, as  
522 defined in Section 37-155-105.

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

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

529 (x) Amounts that are subject to the tax levied pursuant  
530 to Section 1 of Senate Bill No. 3113, 2002 Regular Session, and  
531 are paid to patrons by gaming establishments not licensed under  
532 the Mississippi Gaming Control Act.

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

534 (a) **Members of the Armed Forces.** Gross income does not  
535 include compensation received for active service as a member of  
536 the Armed Forces of the United States for any month during any  
537 part of which such member is in a missing status, as defined in  
538 paragraph (d) of this subsection, during the Vietnam Conflict as a  
539 result of such conflict.

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

544 (c) **Period of conflict.** For the purpose of this  
545 subsection, the Vietnam Conflict began February 28, 1961, and ends  
546 on the date designated by the President by Executive Order as the  
547 date of the termination of combatant activities in Vietnam. For  
548 the purpose of this subsection, an individual is in a missing  
549 status as a result of the Vietnam Conflict if immediately before  
550 such status began he was performing service in Vietnam or was  
551 performing service in Southeast Asia in direct support of military  
552 operations in Vietnam. "Southeast Asia," as used in this



553 paragraph, is defined to include Cambodia, Laos, Thailand and  
554 waters adjacent thereto.

555 (d) "Missing status" means the status of an employee or  
556 member of the Armed Forces who is in active service and is  
557 officially carried or determined to be absent in a status of (i)  
558 missing; (ii) missing in action; (iii) interned in a foreign  
559 country; (iv) captured, beleaguered or besieged by a hostile  
560 force; or (v) detained in a foreign country against his will; but  
561 does not include the status of an employee or member of the Armed  
562 Forces for a period during which he is officially determined to be  
563 absent from his post of duty without authority.

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

567 (f) "Employee" means one who is a citizen or national  
568 of the United States or an alien admitted to the United States for  
569 permanent residence and is a resident of the State of Mississippi  
570 and is employed in or under a federal executive agency or  
571 department of the Armed Forces.

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

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

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



585           (6) A shareholder of an S corporation, as defined in Section  
586 27-8-3(1)(g), shall take into account the income, loss, deduction  
587 or credit of the S corporation only to the extent provided in  
588 Section 27-8-7(2).

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

591           [ \* \* \* Through June 30, 2003, this section shall read as  
592 follows:]

593           27-7-17. In computing taxable income, there shall be allowed  
594 as deductions:

595           (1) **Business deductions.**

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

611           (b) **Interest.** All interest paid or accrued during the  
612 taxable year on business indebtedness, except interest upon the  
613 indebtedness for the purchase of tax-free bonds, or any stocks,  
614 the dividends from which are nontaxable under the provisions of  
615 this article; provided, however, in the case of securities  
616 dealers, interest payments or accruals on loans, the proceeds of  
617 which are used to purchase tax-exempt securities, shall be



618 deductible if income from otherwise tax-free securities is  
619 reported as income. Investment interest expense shall be limited  
620 to investment income. Interest expense incurred for the purchase  
621 of treasury stock, to pay dividends, or incurred as a result of an  
622 undercapitalized affiliated corporation may not be deducted unless  
623 an ordinary and necessary business purpose can be established to  
624 the satisfaction of the commissioner. For the purposes of this  
625 paragraph, the phrase "interest upon the indebtedness for the  
626 purchase of tax-free bonds" applies only to the indebtedness  
627 incurred for the purpose of directly purchasing tax-free bonds and  
628 does not apply to any other indebtedness incurred in the regular  
629 course of the taxpayer's business. Any corporation, association,  
630 organization or other entity taxable under Section 27-7-23(c)  
631 shall allocate interest expense as provided in Section  
632 27-7-23(c)(3)(I).

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

642 (d) **Business losses.**

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

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

649 (e) **Bad debts.** Losses from debts ascertained to be  
650 worthless and charged off during the taxable year, if sustained in



651 the conduct of the regular trade or business of the taxpayer;  
652 provided, that such losses shall be allowed only when the taxpayer  
653 has reported as income, on the accrual basis, the amount of such  
654 debt or account.

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

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

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



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

685 (i) **Reserve funds - insurance companies.** In the case  
686 of insurance companies the net additions required by law to be  
687 made within the taxable year to reserve funds when such reserve  
688 funds are maintained for the purpose of liquidating policies at  
689 maturity.

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

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

705 (i) The plan or trust be irrevocable.

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

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



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

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

733 For any taxable year ending after December 31, 1997, the  
734 period for net operating loss carrybacks and net operating loss  
735 carryovers shall be the same as those established by the Internal  
736 Revenue Code and the rules, regulations, rulings and  
737 determinations promulgated thereunder as in effect at the taxable  
738 year end or on December 31, 2000, whichever is earlier.

739 A net operating loss for any taxable year ending after  
740 December 31, 2001, and taxable years thereafter, shall be a net  
741 operating loss carryback to each of the two (2) taxable years  
742 preceding the taxable year of the loss. If the net operating loss  
743 for any taxable year is not exhausted by carrybacks to the two (2)  
744 taxable years preceding the taxable year of the loss, then there  
745 shall be a net operating loss carryover to each of the twenty (20)  
746 taxable years following the taxable year of the loss beginning  
747 with any taxable year after the taxable year of the loss.



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

752                   (i) No net operating loss deduction shall be  
753 allowed.

754                   (ii) No personal exemption deduction shall be  
755 allowed.

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

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

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

775                   (n) **Dividend distributions - real estate investment**  
776 **trusts.** "Real estate investment trust" (hereinafter referred to  
777 as REIT) shall have the meaning ascribed to such term in Section  
778 856 of the federal Internal Revenue Code of 1986, as amended. A  
779 REIT is allowed a dividend distributed deduction if the dividend  
780 distributions meet the requirements of Section 857 or are



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

783 (i) A dividend distributed deduction shall only be  
784 allowed for dividends paid by a publicly traded REIT. A qualified  
785 REIT subsidiary shall be allowed a dividend distributed deduction  
786 if its owner is a publicly traded REIT.

787 (ii) Income generated from real estate contributed  
788 or sold to a REIT by a shareholder or related party shall not give  
789 rise to a dividend distributed deduction, unless the shareholder  
790 or related party would have received the dividend distributed  
791 deduction under this chapter.

792 (iii) A holding corporation receiving a dividend  
793 from a REIT shall not be allowed the deduction in Section  
794 27-7-15(4)(t).

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

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

803 (o) **Contributions to college savings trust fund**  
804 **accounts.** Contributions or payments to a Mississippi Affordable  
805 College Savings Program account are deductible as provided under  
806 Section 37-155-113. Payments made under a prepaid tuition  
807 contract entered into under the Mississippi Prepaid Affordable  
808 College Tuition Program are deductible as provided under Section  
809 37-155-17.

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

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

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



814                   1. Expenses, losses and costs for, related  
815 to, or in connection directly or indirectly with the direct or  
816 indirect acquisition, use, maintenance or management, ownership,  
817 sale, exchange or any other disposition of intangible property to  
818 the extent such amounts are allowed as deductions or costs in  
819 determining taxable income under this chapter;

820                   2. Expenses or losses related to or incurred  
821 in connection directly or indirectly with factoring transactions  
822 or discounting transactions;

823                   3. Royalty, patent, technical and copyright  
824 fees;

825                   4. Licensing fees; and

826                   5. Other similar expenses and costs.

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

830                   (iii) "Interest expenses and cost" means amounts  
831 directly or indirectly allowed as deductions for purposes of  
832 determining taxable income under this chapter to the extent such  
833 interest expenses and costs are directly or indirectly for,  
834 related to, or in connection with the direct or indirect  
835 acquisition maintenance, management, ownership, sale, exchange or  
836 disposition of intangible property.

837                   (iv) "Related member" means an entity or person  
838 that, with respect to the taxpayer during all or any portion of  
839 the taxable year, is a related entity, a component member as  
840 defined in the Internal Revenue Code, or is an entity or a person  
841 to or from whom there is attribution of stock ownership in  
842 accordance with Section 1563(e) of the Internal Revenue Code.

843                   (v) "Related entity" means:

844                   1. A stockholder who is an individual or a  
845 member of the stockholder's family, as defined in regulations  
846 prescribed by the commissioner, if the stockholder and the members



847 of the stockholder's family own, directly, indirectly,  
848 beneficially or constructively, in the aggregate, at least fifty  
849 percent (50%) of the value of the taxpayer's outstanding stock;

850                   2. A stockholder, or a stockholder's  
851 partnership, limited liability company, estate, trust or  
852 corporation, if the stockholder and the stockholder's  
853 partnerships, limited liability companies, estates, trusts and  
854 corporations own, directly, indirectly, beneficially or  
855 constructively, in the aggregate, at least fifty percent (50%) of  
856 the value of the taxpayer's outstanding stock;

857                   3. A corporation, or a party related to the  
858 corporation in a manner that would require an attribution of stock  
859 from the corporation to the party or from the party to the  
860 corporation, if the taxpayer owns, directly, indirectly,  
861 beneficially or constructively, at least fifty percent (50%) of  
862 the value of the corporation's outstanding stock under regulation  
863 prescribed by the commissioner;

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

867                   (b) In computing net income, a taxpayer shall add back  
868 otherwise deductible interest expenses and costs and intangible  
869 expenses and costs directly or indirectly paid, accrued to or  
870 incurred, in connection directly or indirectly with one or more  
871 direct or indirect transactions with one or more related members.

872                   (c) The adjustments required by this subsection shall  
873 not apply to such portion of interest expenses and costs and  
874 intangible expenses and costs that the taxpayer can establish  
875 meets one (1) of the following:

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



879                   (ii) The transaction giving rise to the interest  
880 expenses and costs or intangible expenses and costs between the  
881 taxpayer and related member was done primarily for a valid  
882 business purpose other than the avoidance of taxes, and the  
883 related member is not primarily engaged in the acquisition, use,  
884 maintenance or management, ownership, sale, exchange or any other  
885 disposition of intangible property.

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

890                   (e) The commissioner may prescribe such regulations as  
891 necessary or appropriate to carry out the purposes of this  
892 subsection, including, but not limited to, clarifying definitions  
893 of terms, rules of stock attribution, factoring and discount  
894 transactions.

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

896                   (a) The amount allowable for individual nonbusiness  
897 itemized deductions for federal income tax purposes where the  
898 individual is eligible to elect, for the taxable year, to itemize  
899 deductions on his federal return except the following:

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

901                           (ii) The deduction for gaming losses from gaming  
902 establishments \* \* \*;

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

905                           (iv) The deduction for taxes collected by gaming  
906 establishments pursuant to Section 1 of Senate Bill No. 3113, 2002  
907 Regular Session.

908                   (b) In lieu of the individual nonbusiness itemized  
909 deductions authorized in paragraph (a), for all purposes other  
910 than ordinary and necessary expenses paid or incurred during the



911 taxable year in carrying on any trade or business, an optional  
912 standard deduction of:

913                   (i) Three Thousand Four Hundred Dollars  
914   (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred  
915 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand  
916 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter  
917 in the case of married individuals filing a joint or combined  
918 return;

919                   (ii) One Thousand Seven Hundred Dollars  
920   (\$1,700.00) through calendar year 1997, Two Thousand One Hundred  
921 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand  
922 Three Hundred Dollars (\$2,300.00) for each calendar year  
923 thereafter in the case of married individuals filing separate  
924 returns;

925                   (iii) Three Thousand Four Hundred Dollars  
926   (\$3,400.00) in the case of a head of family; or

927                   (iv) Two Thousand Three Hundred Dollars  
928   (\$2,300.00) in the case of an individual who is not married.

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

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



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

945 [From and after July 1, 2003, this section shall read as  
946 follows:]

947 27-7-17. In computing taxable income, there shall be allowed  
948 as deductions:

949 (1) **Business deductions.**

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

965 (b) **Interest.** All interest paid or accrued during the  
966 taxable year on business indebtedness, except interest upon the  
967 indebtedness for the purchase of tax-free bonds, or any stocks,  
968 the dividends from which are nontaxable under the provisions of  
969 this article; provided, however, in the case of securities  
970 dealers, interest payments or accruals on loans, the proceeds of  
971 which are used to purchase tax-exempt securities, shall be  
972 deductible if income from otherwise tax-free securities is  
973 reported as income. Investment interest expense shall be limited  
974 to investment income. Interest expense incurred for the purchase  
975 of treasury stock, to pay dividends, or incurred as a result of an



976 undercapitalized affiliated corporation may not be deducted unless  
977 an ordinary and necessary business purpose can be established to  
978 the satisfaction of the commissioner. For the purposes of this  
979 paragraph, the phrase "interest upon the indebtedness for the  
980 purchase of tax-free bonds" applies only to the indebtedness  
981 incurred for the purpose of directly purchasing tax-free bonds and  
982 does not apply to any other indebtedness incurred in the regular  
983 course of the taxpayer's business. Any corporation, association,  
984 organization or other entity taxable under Section 27-7-23(c)  
985 shall allocate interest expense as provided in Section  
986 27-7-23(c)(4)(H).

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

996           (d) **Business losses.**

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

1000                   (ii) Limitations on losses from passive activities  
1001 and rental real estate shall conform to the provisions of the  
1002 Internal Revenue Code of 1986.

1003           (e) **Bad debts.** Losses from debts ascertained to be  
1004 worthless and charged off during the taxable year, if sustained in  
1005 the conduct of the regular trade or business of the taxpayer;  
1006 provided, that such losses shall be allowed only when the taxpayer  
1007 has reported as income, on the accrual basis, the amount of such  
1008 debt or account.



1009           (f) **Depreciation.** A reasonable allowance for  
1010 exhaustion, wear and tear of property used in the trade or  
1011 business, or rental property, and depreciation upon buildings  
1012 based upon their reasonable value as of March 16, 1912, if  
1013 acquired prior thereto, and upon cost if acquired subsequent to  
1014 that date.

1015           (g) **Depletion.** In the case of mines, oil and gas  
1016 wells, other natural deposits and timber, a reasonable allowance  
1017 for depletion and for depreciation of improvements, based upon  
1018 cost, including cost of development, not otherwise deducted, or  
1019 fair market value as of March 16, 1912, if acquired prior to that  
1020 date, such allowance to be made upon regulations prescribed by the  
1021 commissioner, with the approval of the Governor.

1022           (h) **Contributions or gifts.** Except as otherwise  
1023 provided in subsection (2)(a) of this section for individuals,  
1024 contributions or gifts made by corporations within the taxable  
1025 year to corporations, organizations, associations or institutions,  
1026 including Community Chest funds, foundations and trusts created  
1027 solely and exclusively for religious, charitable, scientific or  
1028 educational purposes, or for the prevention of cruelty to children  
1029 or animals, no part of the net earnings of which inure to the  
1030 benefit of any private stockholder or individual. This deduction  
1031 shall be allowed in an amount not to exceed twenty percent (20%)  
1032 of the net income. Such contributions or gifts shall be allowable  
1033 as deductions only if verified under rules and regulations  
1034 prescribed by the commissioner, with the approval of the Governor.  
1035 Contributions made in any form other than cash shall be allowed as  
1036 a deduction, subject to the limitations herein provided, in an  
1037 amount equal to the actual market value of the contributions at  
1038 the time the contribution is actually made and consummated.

1039           (i) **Reserve funds - insurance companies.** In the case  
1040 of insurance companies the net additions required by law to be  
1041 made within the taxable year to reserve funds when such reserve



1042 funds are maintained for the purpose of liquidating policies at  
1043 maturity.

1044           (j) **Annuity income.** The sums, other than dividends,  
1045 paid within the taxpayer year on policy or annuity contracts when  
1046 such income has been included in gross income.

1047           (k) **Contributions to employee pension plans.**  
1048 Contributions made by an employer to a plan or a trust forming  
1049 part of a pension plan, stock bonus plan, disability or  
1050 death-benefit plan, or profit-sharing plan of such employer for  
1051 the exclusive benefit of some or all of his, their, or its  
1052 employees, or their beneficiaries, shall be deductible from his,  
1053 their, or its income only to the extent that, and for the taxable  
1054 year in which, the contribution is deductible for federal income  
1055 tax purposes under the Internal Revenue Code of 1986 and any other  
1056 provisions of similar purport in the Internal Revenue Laws of the  
1057 United States, and the rules, regulations, rulings and  
1058 determinations promulgated thereunder, provided that:

1059                   (i) The plan or trust be irrevocable.

1060                   (ii) The plan or trust constitute a part of a  
1061 pension plan, stock bonus plan, disability or death-benefit plan,  
1062 or profit-sharing plan for the exclusive benefit of some or all of  
1063 the employer's employees and/or officers, or their beneficiaries,  
1064 for the purpose of distributing the corpus and income of the plan  
1065 or trust to such employees and/or officers, or their  
1066 beneficiaries.

1067                   (iii) No part of the corpus or income of the plan  
1068 or trust can be used for purposes other than for the exclusive  
1069 benefit of employees and/or officers, or their beneficiaries.

1070           Contributions to all plans or to all trusts of real or  
1071 personal property (or real and personal property combined) or to  
1072 insured plans created under a retirement plan for which provision  
1073 has been made under the laws of the United States of America,  
1074 making such contributions deductible from income for federal



1075 income tax purposes, shall be deductible only to the same extent  
1076 under the Income Tax Laws of the State of Mississippi.

1077           (1) **Net operating loss carrybacks and carryovers.** A  
1078 net operating loss for any taxable year ending after December 31,  
1079 1993, and taxable years thereafter, shall be a net operating loss  
1080 carryback to each of the three (3) taxable years preceding the  
1081 taxable year of the loss. If the net operating loss for any  
1082 taxable year is not exhausted by carrybacks to the three (3)  
1083 taxable years preceding the taxable year of the loss, then there  
1084 shall be a net operating loss carryover to each of the fifteen  
1085 (15) taxable years following the taxable year of the loss  
1086 beginning with any taxable year after December 31, 1991.

1087           For any taxable year ending after December 31, 1997, the  
1088 period for net operating loss carrybacks and net operating loss  
1089 carryovers shall be the same as those established by the Internal  
1090 Revenue Code and the rules, regulations, rulings and  
1091 determinations promulgated thereunder as in effect at the taxable  
1092 year end or on December 31, 2000, whichever is earlier.

1093           A net operating loss for any taxable year ending after  
1094 December 31, 2001, and taxable years thereafter, shall be a net  
1095 operating loss carryback to each of the two (2) taxable years  
1096 preceding the taxable year of the loss. If the net operating loss  
1097 for any taxable year is not exhausted by carrybacks to the two (2)  
1098 taxable years preceding the taxable year of the loss, then there  
1099 shall be a net operating loss carryover to each of the twenty (20)  
1100 taxable years following the taxable year of the loss beginning  
1101 with any taxable year after the taxable year of the loss.

1102           The term "net operating loss," for the purposes of this  
1103 paragraph, shall be the excess of the deductions allowed over the  
1104 gross income; provided, however, the following deductions shall  
1105 not be allowed in computing same:

1106           (i) No net operating loss deduction shall be  
1107 allowed.



1108 (ii) No personal exemption deduction shall be  
1109 allowed.

1110 (iii) Allowable deductions which are not  
1111 attributable to taxpayer's trade or business shall be allowed only  
1112 to the extent of the amount of gross income not derived from such  
1113 trade or business.

1114 Any taxpayer entitled to a carryback period as provided by  
1115 this paragraph may elect to relinquish the entire carryback period  
1116 with respect to a net operating loss for any taxable year ending  
1117 after December 31, 1991. The election shall be made in the manner  
1118 prescribed by the State Tax Commission and shall be made by the  
1119 due date, including extensions of time, for filing the taxpayer's  
1120 return for the taxable year of the net operating loss for which  
1121 the election is to be in effect. The election, once made for any  
1122 taxable year, shall be irrevocable for that taxable year.

1123 (m) **Amortization of pollution or environmental control**  
1124 **facilities.** Allowance of deduction. Every taxpayer, at his  
1125 election, shall be entitled to a deduction for pollution or  
1126 environmental control facilities to the same extent as that  
1127 allowed under the Internal Revenue Code and the rules,  
1128 regulations, rulings and determinations promulgated thereunder.

1129 (n) **Dividend distributions - real estate investment**  
1130 **trusts.** "Real estate investment trust" (hereinafter referred to  
1131 as REIT) shall have the meaning ascribed to such term in Section  
1132 856 of the federal Internal Revenue Code of 1986, as amended. A  
1133 REIT is allowed a dividend distributed deduction if the dividend  
1134 distributions meet the requirements of Section 857 or are  
1135 otherwise deductible under Section 858 or 860, federal Internal  
1136 Revenue Code of 1986, as amended. In addition:

1137 (i) A dividend distributed deduction shall only be  
1138 allowed for dividends paid by a publicly traded REIT. A qualified  
1139 REIT subsidiary shall be allowed a dividend distributed deduction  
1140 if its owner is a publicly traded REIT.



1141 (ii) Income generated from real estate contributed  
1142 or sold to a REIT by a shareholder or related party shall not give  
1143 rise to a dividend distributed deduction, unless the shareholder  
1144 or related party would have received the dividend distributed  
1145 deduction under this chapter.

1146 (iii) A holding corporation receiving a dividend  
1147 from a REIT shall not be allowed the deduction in Section  
1148 27-7-15(4)(t).

1149 (iv) Any REIT not allowed the dividend distributed  
1150 deduction in the federal Internal Revenue Code of 1986, as  
1151 amended, shall not be allowed a dividend distributed deduction  
1152 under this chapter.

1153 The commissioner is authorized to promulgate rules and  
1154 regulations consistent with the provisions in Section 269 of the  
1155 federal Internal Revenue Code of 1986, as amended, so as to  
1156 prevent the evasion or avoidance of state income tax.

1157 (o) **Contributions to college savings trust fund**  
1158 **accounts.** Contributions or payments to a Mississippi Affordable  
1159 College Savings Program account are deductible as provided under  
1160 Section 37-155-113. Payments made under a prepaid tuition  
1161 contract entered into under the Mississippi Prepaid Affordable  
1162 College Tuition Program are deductible as provided under Section  
1163 37-155-17.

1164 (2) **Individual nonbusiness deductions.**

1165 (a) The amount allowable for individual nonbusiness  
1166 itemized deductions for federal income tax purposes where the  
1167 individual is eligible to elect, for the taxable year, to itemize  
1168 deductions on his federal return except the following:

1169 (i) The deduction for state income taxes paid;

1170 (ii) The deduction for gaming losses from gaming  
1171 establishments \* \* \*;

1172 (iii) The deduction for taxes collected  
1173 by licensed gaming establishments pursuant to Section 27-7-901;



1174                    (iv) The deduction for taxes collected by gaming  
1175 establishments pursuant to Section 1 of Senate Bill No. 3113, 2002  
1176 Regular Session.

1177                    (b) In lieu of the individual nonbusiness itemized  
1178 deductions authorized in paragraph (a), for all purposes other  
1179 than ordinary and necessary expenses paid or incurred during the  
1180 taxable year in carrying on any trade or business, an optional  
1181 standard deduction of:

1182                    (i) Three Thousand Four Hundred Dollars  
1183 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred  
1184 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand  
1185 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter  
1186 in the case of married individuals filing a joint or combined  
1187 return;

1188                    (ii) One Thousand Seven Hundred Dollars  
1189 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred  
1190 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand  
1191 Three Hundred Dollars (\$2,300.00) for each calendar year  
1192 thereafter in the case of married individuals filing separate  
1193 returns;

1194                    (iii) Three Thousand Four Hundred Dollars  
1195 (\$3,400.00) in the case of a head of family; or

1196                    (iv) Two Thousand Three Hundred Dollars  
1197 (\$2,300.00) in the case of an individual who is not married.

1198                    In the case of a husband and wife living together, having  
1199 separate incomes, and filing combined returns, the standard  
1200 deduction authorized may be divided in any manner they choose. In  
1201 the case of separate returns by a husband and wife, the standard  
1202 deduction shall not be allowed to either if the taxable income of  
1203 one of the spouses is determined without regard to the standard  
1204 deduction.

1205                    (c) A nonresident individual shall be allowed the same  
1206 individual nonbusiness deductions as are authorized for resident



1207 individuals in paragraph (a) or (b) of this subsection; however,  
1208 the nonresident individual is entitled only to that proportion of  
1209 the individual nonbusiness deductions as his net income from  
1210 sources within the State of Mississippi bears to his total or  
1211 entire net income from all sources.

1212 (3) Nothing in this section shall permit the same item to be  
1213 deducted more than once, either in fact or in effect.

1214 **SECTION 4.** This act shall take effect and be in force from  
1215 and after January 1, 2002.

