

By: Representative Moak

To: Ways and Means

HOUSE BILL NO. 338

1 AN ACT TO ALLOW DEDUCTIONS IN COMPUTING TAXABLE INCOME FOR
2 INCOME TAXES TO INDIVIDUALS COMPLETING HIGH SCHOOL OR COLLEGE, OR
3 BOTH, IN THIS STATE; TO AMEND SECTION 27-7-17, MISSISSIPPI CODE OF
4 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** (1) For any individual, there shall be allowed
7 as deductions in computing taxable income under this chapter, such
8 amounts as follows:

9 (a) One Thousand Dollars (\$1,000.00) for being
10 graduated from an accredited public or private high school in this
11 state;

12 (b) One Thousand Dollars (\$1,000.00) for being
13 graduated from an accredited public or private junior college or
14 community college in this state; and

15 (c) One Thousand Dollars (\$1,000.00) for being
16 graduated from an accredited public or private institution of
17 higher learning in this state, except the deduction under this
18 item (c) shall be Two Thousand Dollars (\$2,000.00) if the
19 deduction under item (b) is inapplicable.

20 (2) The deductions described under subsection (1) of this
21 section shall be allowed to individuals who are graduated during
22 2003 or any year thereafter; however, the deduction for amounts
23 under item (a), (b) or (c) of subsection (1) of this section shall
24 be allowed to an individual only once and for one (1) taxable year
25 only. The deduction or deductions allowed to an individual shall
26 not be allowed for any taxable year:



27 (a) Which is more than three (3) years after such
28 individual is graduated from an accredited public or private high
29 school in this state; or

30 (b) Which is more than three (3) years after such
31 individual ceases to be a full-time student at any accredited
32 public or private institution of higher learning in this state, if
33 within three (3) years after having been graduated from high
34 school, such individual continues his education at an accredited
35 public or private junior college, community college or institution
36 of higher learning in this state.

37 The individual allowed the deduction or deductions under
38 subsection (1) of this section may assign all deductions for which
39 he is entitled to a parent, parents or a legal guardian.

40 An individual shall be deemed to have been graduated from an
41 institution of higher learning on the date of final completion of
42 all courses, hours or credits required for graduation. An
43 individual shall be deemed to have been graduated from a junior
44 college or community college on the date of final completion of
45 all courses, hours or credits required for graduation. Completion
46 of General Educational Development (GED) in this state shall be
47 deemed to be graduation from an accredited high school in this
48 state.

49 (3) A nonresident individual shall be allowed the same
50 deductions under this section as are authorized for resident
51 individuals. However, the nonresident individual is entitled only
52 to that proportion of the deductions as his net income from
53 sources within the State of Mississippi bears to his total or
54 entire net income from all sources.

55 **SECTION 2.** Section 27-7-17, Mississippi Code of 1972, is
56 amended as follows:

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

58 27-7-17. In computing taxable income, there shall be allowed
59 as deductions:



60 (1) **Business deductions.**

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

76 (b) **Interest.** All interest paid or accrued during the
77 taxable year on business indebtedness, except interest upon the
78 indebtedness for the purchase of tax-free bonds, or any stocks,
79 the dividends from which are nontaxable under the provisions of
80 this article; provided, however, in the case of securities
81 dealers, interest payments or accruals on loans, the proceeds of
82 which are used to purchase tax-exempt securities, shall be
83 deductible if income from otherwise tax-free securities is
84 reported as income. Investment interest expense shall be limited
85 to investment income. Interest expense incurred for the purchase
86 of treasury stock, to pay dividends, or incurred as a result of an
87 undercapitalized affiliated corporation may not be deducted unless
88 an ordinary and necessary business purpose can be established to
89 the satisfaction of the commissioner. For the purposes of this
90 paragraph, the phrase "interest upon the indebtedness for the
91 purchase of tax-free bonds" applies only to the indebtedness
92 incurred for the purpose of directly purchasing tax-free bonds and



93 does not apply to any other indebtedness incurred in the regular
94 course of the taxpayer's business. Any corporation, association,
95 organization or other entity taxable under Section 27-7-23(c)
96 shall allocate interest expense as provided in Section
97 27-7-23(c)(3)(I).

98 (c) **Taxes.** Taxes paid or accrued within the taxable
99 year, except state and federal income taxes, excise taxes based on
100 or measured by net income, estate and inheritance taxes, gift
101 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
102 use taxes unless incurred as an item of expense in a trade or
103 business or in the production of taxable income. In the case of
104 an individual, taxes permitted as an itemized deduction under the
105 provisions of subsection (3)(a) of this section are to be claimed
106 thereunder.

107 (d) **Business losses.**

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

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

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

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



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

133 (h) **Contributions or gifts.** Except as otherwise
134 provided in subsection (3)(a) of this section for individuals,
135 contributions or gifts made by corporations within the taxable
136 year to corporations, organizations, associations or institutions,
137 including Community Chest funds, foundations and trusts created
138 solely and exclusively for religious, charitable, scientific or
139 educational purposes, or for the prevention of cruelty to children
140 or animals, no part of the net earnings of which inure to the
141 benefit of any private stockholder or individual. This deduction
142 shall be allowed in an amount not to exceed twenty percent (20%)
143 of the net income. Such contributions or gifts shall be allowable
144 as deductions only if verified under rules and regulations
145 prescribed by the commissioner, with the approval of the Governor.
146 Contributions made in any form other than cash shall be allowed as
147 a deduction, subject to the limitations herein provided, in an
148 amount equal to the actual market value of the contributions at
149 the time the contribution is actually made and consummated.

150 (i) **Reserve funds - insurance companies.** In the case
151 of insurance companies the net additions required by law to be
152 made within the taxable year to reserve funds when such reserve
153 funds are maintained for the purpose of liquidating policies at
154 maturity.

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



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

170 (i) The plan or trust be irrevocable.

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

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

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

188 (1) **Net operating loss carrybacks and carryovers.** A
189 net operating loss for any taxable year ending after December 31,
190 1993, and taxable years thereafter, shall be a net operating loss



191 carryback to each of the three (3) taxable years preceding the
192 taxable year of the loss. If the net operating loss for any
193 taxable year is not exhausted by carrybacks to the three (3)
194 taxable years preceding the taxable year of the loss, then there
195 shall be a net operating loss carryover to each of the fifteen
196 (15) taxable years following the taxable year of the loss
197 beginning with any taxable year after December 31, 1991.

198 For any taxable year ending after December 31, 1997, the
199 period for net operating loss carrybacks and net operating loss
200 carryovers shall be the same as those established by the Internal
201 Revenue Code and the rules, regulations, rulings and
202 determinations promulgated thereunder as in effect at the taxable
203 year end or on December 31, 2000, whichever is earlier.

204 A net operating loss for any taxable year ending after
205 December 31, 2001, and taxable years thereafter, shall be a net
206 operating loss carryback to each of the two (2) taxable years
207 preceding the taxable year of the loss. If the net operating loss
208 for any taxable year is not exhausted by carrybacks to the two (2)
209 taxable years preceding the taxable year of the loss, then there
210 shall be a net operating loss carryover to each of the twenty (20)
211 taxable years following the taxable year of the loss beginning
212 with any taxable year after the taxable year of the loss.

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

217 (i) No net operating loss deduction shall be
218 allowed.

219 (ii) No personal exemption deduction shall be
220 allowed.

221 (iii) Allowable deductions which are not
222 attributable to taxpayer's trade or business shall be allowed only



223 to the extent of the amount of gross income not derived from such
224 trade or business.

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

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

240 (n) **Dividend distributions - real estate investment**
241 **trusts.** "Real estate investment trust" (hereinafter referred to
242 as REIT) shall have the meaning ascribed to such term in Section
243 856 of the federal Internal Revenue Code of 1986, as amended. A
244 REIT is allowed a dividend distributed deduction if the dividend
245 distributions meet the requirements of Section 857 or are
246 otherwise deductible under Section 858 or 860, federal Internal
247 Revenue Code of 1986, as amended. In addition:

248 (i) A dividend distributed deduction shall only be
249 allowed for dividends paid by a publicly traded REIT. A qualified
250 REIT subsidiary shall be allowed a dividend distributed deduction
251 if its owner is a publicly traded REIT.

252 (ii) Income generated from real estate contributed
253 or sold to a REIT by a shareholder or related party shall not give
254 rise to a dividend distributed deduction, unless the shareholder



255 or related party would have received the dividend distributed
256 deduction under this chapter.

257 (iii) A holding corporation receiving a dividend
258 from a REIT shall not be allowed the deduction in Section
259 27-7-15(4)(t).

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

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

268 (o) **Contributions to college savings trust fund**
269 **accounts.** Contributions or payments to a Mississippi Affordable
270 College Savings Program account are deductible as provided under
271 Section 37-155-113. Payments made under a prepaid tuition
272 contract entered into under the Mississippi Prepaid Affordable
273 College Tuition Program are deductible as provided under Section
274 37-155-17.

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

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

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

279 1. Expenses, losses and costs for, related
280 to, or in connection directly or indirectly with the direct or
281 indirect acquisition, use, maintenance or management, ownership,
282 sale, exchange or any other disposition of intangible property to
283 the extent such amounts are allowed as deductions or costs in
284 determining taxable income under this chapter;

285 2. Expenses or losses related to or incurred
286 in connection directly or indirectly with factoring transactions
287 or discounting transactions;



288 3. Royalty, patent, technical and copyright
289 fees;

290 4. Licensing fees; and

291 5. Other similar expenses and costs.

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

295 (iii) "Interest expenses and cost" means amounts
296 directly or indirectly allowed as deductions for purposes of
297 determining taxable income under this chapter to the extent such
298 interest expenses and costs are directly or indirectly for,
299 related to, or in connection with the direct or indirect
300 acquisition, maintenance, management, ownership, sale, exchange or
301 disposition of intangible property.

302 (iv) "Related member" means an entity or person
303 that, with respect to the taxpayer during all or any portion of
304 the taxable year, is a related entity, a component member as
305 defined in the Internal Revenue Code, or is an entity or a person
306 to or from whom there is attribution of stock ownership in
307 accordance with Section 1563(e) of the Internal Revenue Code.

308 (v) "Related entity" means:

309 1. A stockholder who is an individual or a
310 member of the stockholder's family, as defined in regulations
311 prescribed by the commissioner, if the stockholder and the members
312 of the stockholder's family own, directly, indirectly,
313 beneficially or constructively, in the aggregate, at least fifty
314 percent (50%) of the value of the taxpayer's outstanding stock;

315 2. A stockholder, or a stockholder's
316 partnership, limited liability company, estate, trust or
317 corporation, if the stockholder and the stockholder's
318 partnerships, limited liability companies, estates, trusts and
319 corporations own, directly, indirectly, beneficially or



320 constructively, in the aggregate, at least fifty percent (50%) of
321 the value of the taxpayer's outstanding stock;

322 3. A corporation, or a party related to the
323 corporation in a manner that would require an attribution of stock
324 from the corporation to the party or from the party to the
325 corporation, if the taxpayer owns, directly, indirectly,
326 beneficially or constructively, at least fifty percent (50%) of
327 the value of the corporation's outstanding stock under regulation
328 prescribed by the commissioner;

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

332 (b) In computing net income, a taxpayer shall add back
333 otherwise deductible interest expenses and costs and intangible
334 expenses and costs directly or indirectly paid, accrued to or
335 incurred, in connection directly or indirectly with one or more
336 direct or indirect transactions with one or more related members.

337 (c) The adjustments required by this subsection shall
338 not apply to such portion of interest expenses and costs and
339 intangible expenses and costs that the taxpayer can establish
340 meets one (1) of the following:

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

344 (ii) The transaction giving rise to the interest
345 expenses and costs or intangible expenses and costs between the
346 taxpayer and related member was done primarily for a valid
347 business purpose other than the avoidance of taxes, and the
348 related member is not primarily engaged in the acquisition, use,
349 maintenance or management, ownership, sale, exchange or any other
350 disposition of intangible property.

351 (d) Nothing in this subsection shall require a taxpayer
352 to add to its net income more than once any amount of interest



353 expenses and costs or intangible expenses and costs that the
354 taxpayer pays, accrues or incurs to a related member.

355 (e) The commissioner may prescribe such regulations as
356 necessary or appropriate to carry out the purposes of this
357 subsection, including, but not limited to, clarifying definitions
358 of terms, rules of stock attribution, factoring and discount
359 transactions.

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

361 (a) The amount allowable for individual nonbusiness
362 itemized deductions for federal income tax purposes where the
363 individual is eligible to elect, for the taxable year, to itemize
364 deductions on his federal return except the following:

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

366 (ii) The deduction for gaming losses from gaming
367 establishments;

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

370 (iv) The deduction for taxes collected by gaming
371 establishments pursuant to Section 27-7-903.

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

377 (i) Three Thousand Four Hundred Dollars

378 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
379 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
380 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
381 in the case of married individuals filing a joint or combined
382 return;

383 (ii) One Thousand Seven Hundred Dollars

384 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
385 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand



386 Three Hundred Dollars (\$2,300.00) for each calendar year
387 thereafter in the case of married individuals filing separate
388 returns;

389 (iii) Three Thousand Four Hundred Dollars
390 (\$3,400.00) in the case of a head of family; or

391 (iv) Two Thousand Three Hundred Dollars
392 (\$2,300.00) in the case of an individual who is not married.

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

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

407 (d) The amount allowable under Section 1 of House Bill
408 No. 338, 2003 Regular Session, for being graduated from an
409 accredited public or private high school, junior college or
410 community college or institution of higher learning in this state.

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

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

415 27-7-17. In computing taxable income, there shall be allowed
416 as deductions:

417 (1) **Business deductions.**



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

433 (b) **Interest.** All interest paid or accrued during the
434 taxable year on business indebtedness, except interest upon the
435 indebtedness for the purchase of tax-free bonds, or any stocks,
436 the dividends from which are nontaxable under the provisions of
437 this article; provided, however, in the case of securities
438 dealers, interest payments or accruals on loans, the proceeds of
439 which are used to purchase tax-exempt securities, shall be
440 deductible if income from otherwise tax-free securities is
441 reported as income. Investment interest expense shall be limited
442 to investment income. Interest expense incurred for the purchase
443 of treasury stock, to pay dividends, or incurred as a result of an
444 undercapitalized affiliated corporation may not be deducted unless
445 an ordinary and necessary business purpose can be established to
446 the satisfaction of the commissioner. For the purposes of this
447 paragraph, the phrase "interest upon the indebtedness for the
448 purchase of tax-free bonds" applies only to the indebtedness
449 incurred for the purpose of directly purchasing tax-free bonds and
450 does not apply to any other indebtedness incurred in the regular



451 course of the taxpayer's business. Any corporation, association,
452 organization or other entity taxable under Section 27-7-23(c)
453 shall allocate interest expense as provided in Section
454 27-7-23(c)(4)(H).

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

464 (d) **Business losses.**

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

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

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

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



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

490 (h) **Contributions or gifts.** Except as otherwise
491 provided in subsection (2)(a) of this section for individuals,
492 contributions or gifts made by corporations within the taxable
493 year to corporations, organizations, associations or institutions,
494 including Community Chest funds, foundations and trusts created
495 solely and exclusively for religious, charitable, scientific or
496 educational purposes, or for the prevention of cruelty to children
497 or animals, no part of the net earnings of which inure to the
498 benefit of any private stockholder or individual. This deduction
499 shall be allowed in an amount not to exceed twenty percent (20%)
500 of the net income. Such contributions or gifts shall be allowable
501 as deductions only if verified under rules and regulations
502 prescribed by the commissioner, with the approval of the Governor.
503 Contributions made in any form other than cash shall be allowed as
504 a deduction, subject to the limitations herein provided, in an
505 amount equal to the actual market value of the contributions at
506 the time the contribution is actually made and consummated.

507 (i) **Reserve funds - insurance companies.** In the case
508 of insurance companies the net additions required by law to be
509 made within the taxable year to reserve funds when such reserve
510 funds are maintained for the purpose of liquidating policies at
511 maturity.

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



515 (k) **Contributions to employee pension plans.**

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

527 (i) The plan or trust be irrevocable.

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

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

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

545 (1) **Net operating loss carrybacks and carryovers.** A
546 net operating loss for any taxable year ending after December 31,
547 1993, and taxable years thereafter, shall be a net operating loss



548 carryback to each of the three (3) taxable years preceding the
549 taxable year of the loss. If the net operating loss for any
550 taxable year is not exhausted by carrybacks to the three (3)
551 taxable years preceding the taxable year of the loss, then there
552 shall be a net operating loss carryover to each of the fifteen
553 (15) taxable years following the taxable year of the loss
554 beginning with any taxable year after December 31, 1991.

555 For any taxable year ending after December 31, 1997, the
556 period for net operating loss carrybacks and net operating loss
557 carryovers shall be the same as those established by the Internal
558 Revenue Code and the rules, regulations, rulings and
559 determinations promulgated thereunder as in effect at the taxable
560 year end or on December 31, 2000, whichever is earlier.

561 A net operating loss for any taxable year ending after
562 December 31, 2001, and taxable years thereafter, shall be a net
563 operating loss carryback to each of the two (2) taxable years
564 preceding the taxable year of the loss. If the net operating loss
565 for any taxable year is not exhausted by carrybacks to the two (2)
566 taxable years preceding the taxable year of the loss, then there
567 shall be a net operating loss carryover to each of the twenty (20)
568 taxable years following the taxable year of the loss beginning
569 with any taxable year after the taxable year of the loss.

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

574 (i) No net operating loss deduction shall be
575 allowed.

576 (ii) No personal exemption deduction shall be
577 allowed.

578 (iii) Allowable deductions which are not
579 attributable to taxpayer's trade or business shall be allowed only



580 to the extent of the amount of gross income not derived from such
581 trade or business.

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

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

597 (n) **Dividend distributions - real estate investment**
598 **trusts.** "Real estate investment trust" (hereinafter referred to
599 as REIT) shall have the meaning ascribed to such term in Section
600 856 of the federal Internal Revenue Code of 1986, as amended. A
601 REIT is allowed a dividend distributed deduction if the dividend
602 distributions meet the requirements of Section 857 or are
603 otherwise deductible under Section 858 or 860, federal Internal
604 Revenue Code of 1986, as amended. In addition:

605 (i) A dividend distributed deduction shall only be
606 allowed for dividends paid by a publicly traded REIT. A qualified
607 REIT subsidiary shall be allowed a dividend distributed deduction
608 if its owner is a publicly traded REIT.

609 (ii) Income generated from real estate contributed
610 or sold to a REIT by a shareholder or related party shall not give
611 rise to a dividend distributed deduction, unless the shareholder



612 or related party would have received the dividend distributed
613 deduction under this chapter.

614 (iii) A holding corporation receiving a dividend
615 from a REIT shall not be allowed the deduction in Section
616 27-7-15(4)(t).

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

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

625 (o) **Contributions to college savings trust fund**
626 **accounts.** Contributions or payments to a Mississippi Affordable
627 College Savings Program account are deductible as provided under
628 Section 37-155-113. Payments made under a prepaid tuition
629 contract entered into under the Mississippi Prepaid Affordable
630 College Tuition Program are deductible as provided under Section
631 37-155-17.

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

633 (a) The amount allowable for individual nonbusiness
634 itemized deductions for federal income tax purposes where the
635 individual is eligible to elect, for the taxable year, to itemize
636 deductions on his federal return except the following:

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

638 (ii) The deduction for gaming losses from gaming
639 establishments;

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

642 (iv) The deduction for taxes collected by gaming
643 establishments pursuant to Section 27-7-903.



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

649 (i) Three Thousand Four Hundred Dollars
650 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
651 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
652 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
653 in the case of married individuals filing a joint or combined
654 return;

655 (ii) One Thousand Seven Hundred Dollars
656 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
657 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
658 Three Hundred Dollars (\$2,300.00) for each calendar year
659 thereafter in the case of married individuals filing separate
660 returns;

661 (iii) Three Thousand Four Hundred Dollars
662 (\$3,400.00) in the case of a head of family; or

663 (iv) Two Thousand Three Hundred Dollars
664 (\$2,300.00) in the case of an individual who is not married.

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

672 (c) A nonresident individual shall be allowed the same
673 individual nonbusiness deductions as are authorized for resident
674 individuals in paragraph (a) or (b) of this subsection; however,
675 the nonresident individual is entitled only to that proportion of
676 the individual nonbusiness deductions as his net income from



677 sources within the State of Mississippi bears to his total or
678 entire net income from all sources.

679 (d) The amount allowable under Section 1 of House Bill
680 No. 338, 2003 Regular Session, for being graduated from an
681 accredited public or private high school, junior college or
682 community college or institution of higher learning in this state.

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

685 **SECTION 3.** Nothing in this act shall affect or defeat any
686 claim, assessment, appeal, suit, right or cause of action for
687 taxes due or accrued under the income tax laws before the date on
688 which this act becomes effective, whether such claims,
689 assessments, appeals, suits or actions have been begun before the
690 date on which this act becomes effective or are begun thereafter;
691 and the provisions of the income tax laws are expressly continued
692 in full force, effect and operation for the purpose of the
693 assessment, collection and enrollment of liens for any taxes due
694 or accrued and the execution of any warrant under such laws before
695 the date on which this act becomes effective, and for the
696 imposition of any penalties, forfeitures or claims for failure to
697 comply with such laws.

698 **SECTION 4.** Section 1 of this act shall be codified as a
699 separate Code section in Chapter 7, Title 27, Mississippi Code of
700 1972.

701 **SECTION 5.** This act shall take effect and be in force from
702 and after January 1, 2003.

