

By: Representative Fleming

To: Ways and Means

HOUSE BILL NO. 169

1 AN ACT TO AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE AN INCOME TAX DEDUCTION FOR TAXPAYERS WHO INCUR EXPENSES
3 FOR MEDICAL CARE OR PRESCRIBED DRUGS, OR BOTH, FOR THE TAXPAYER,
4 THE TAXPAYER'S SPOUSE OR DEPENDENTS, REGARDLESS OF THE AMOUNT OF
5 SUCH EXPENSES INCURRED DURING A TAXABLE YEAR; AND FOR RELATED
6 PURPOSES.

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

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

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

12 (1) **Business deductions.**

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

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

30 indebtedness for the purchase of tax-free bonds, or any stocks,
31 the dividends from which are nontaxable under the provisions of
32 this article; provided, however, in the case of securities
33 dealers, interest payments or accruals on loans, the proceeds of
34 which are used to purchase tax-exempt securities, shall be
35 deductible if income from otherwise tax-free securities is
36 reported as income. Investment interest expense shall be limited
37 to investment income. Interest expense incurred for the purchase
38 of treasury stock, to pay dividends, or incurred as a result of an
39 undercapitalized affiliated corporation may not be deducted unless
40 an ordinary and necessary business purpose can be established to
41 the satisfaction of the commissioner. For the purposes of this
42 paragraph, the phrase "interest upon the indebtedness for the
43 purchase of tax-free bonds" applies only to the indebtedness
44 incurred for the purpose of directly purchasing tax-free bonds and
45 does not apply to any other indebtedness incurred in the regular
46 course of the taxpayer's business. Any corporation, association,
47 organization or other entity taxable under Section 27-7-23(c)
48 shall allocate interest expense as provided in Section
49 27-7-23(c)(3)(I).

50 (c) **Taxes.** Taxes paid or accrued within the taxable
51 year, except state and federal income taxes, excise taxes based on
52 or measured by net income, estate and inheritance taxes, gift
53 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
54 use taxes unless incurred as an item of expense in a trade or
55 business or in the production of taxable income. In the case of
56 an individual, taxes permitted as an itemized deduction under the
57 provisions of subsection (3)(a) of this section are to be claimed
58 thereunder.

59 (d) **Business losses.**

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

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

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

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

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

85 (h) **Contributions or gifts.** Except as otherwise
86 provided in subsection (3)(a) of this section for individuals,
87 contributions or gifts made by corporations within the taxable
88 year to corporations, organizations, associations or institutions,
89 including Community Chest funds, foundations and trusts created
90 solely and exclusively for religious, charitable, scientific or
91 educational purposes, or for the prevention of cruelty to children
92 or animals, no part of the net earnings of which inure to the
93 benefit of any private stockholder or individual. This deduction
94 shall be allowed in an amount not to exceed twenty percent (20%)
95 of the net income. Such contributions or gifts shall be allowable

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

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

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

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

122 (i) The plan or trust be irrevocable.

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

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

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

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

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

150 For any taxable year ending after December 31, 1997, the
151 period for net operating loss carrybacks and net operating loss
152 carryovers shall be the same as those established by the Internal
153 Revenue Code and the rules, regulations, rulings and
154 determinations promulgated thereunder as in effect at the taxable
155 year end or on December 31, 2000, whichever is earlier.

156 A net operating loss for any taxable year ending after
157 December 31, 2001, and taxable years thereafter, shall be a net
158 operating loss carryback to each of the two (2) taxable years
159 preceding the taxable year of the loss. If the net operating loss
160 for any taxable year is not exhausted by carrybacks to the two (2)

161 taxable years preceding the taxable year of the loss, then there
162 shall be a net operating loss carryover to each of the twenty (20)
163 taxable years following the taxable year of the loss beginning
164 with any taxable year after the taxable year of the loss.

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

169 (i) No net operating loss deduction shall be
170 allowed.

171 (ii) No personal exemption deduction shall be
172 allowed.

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

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

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

192 (n) **Dividend distributions - real estate investment**
193 **trusts.** "Real estate investment trust" (hereinafter referred to

194 as REIT) shall have the meaning ascribed to such term in Section
195 856 of the federal Internal Revenue Code of 1986, as amended. A
196 REIT is allowed a dividend distributed deduction if the dividend
197 distributions meet the requirements of Section 857 or are
198 otherwise deductible under Section 858 or 860, federal Internal
199 Revenue Code of 1986, as amended. In addition:

200 (i) A dividend distributed deduction shall only be
201 allowed for dividends paid by a publicly traded REIT. A qualified
202 REIT subsidiary shall be allowed a dividend distributed deduction
203 if its owner is a publicly traded REIT.

204 (ii) Income generated from real estate contributed
205 or sold to a REIT by a shareholder or related party shall not give
206 rise to a dividend distributed deduction, unless the shareholder
207 or related party would have received the dividend distributed
208 deduction under this chapter.

209 (iii) A holding corporation receiving a dividend
210 from a REIT shall not be allowed the deduction in Section
211 27-7-15(4)(t).

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

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

220 (o) **Contributions to college savings trust fund**
221 **accounts.** Contributions or payments to a Mississippi Affordable
222 College Savings Program account are deductible as provided under
223 Section 37-155-113. Payments made under a prepaid tuition
224 contract entered into under the Mississippi Prepaid Affordable
225 College Tuition Program are deductible as provided under Section
226 37-155-17.

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

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

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

231 1. Expenses, losses and costs for, related
232 to, or in connection directly or indirectly with the direct or
233 indirect acquisition, use, maintenance or management, ownership,
234 sale, exchange or any other disposition of intangible property to
235 the extent such amounts are allowed as deductions or costs in
236 determining taxable income under this chapter;

237 2. Expenses or losses related to or incurred
238 in connection directly or indirectly with factoring transactions
239 or discounting transactions;

240 3. Royalty, patent, technical and copyright
241 fees;

242 4. Licensing fees; and

243 5. Other similar expenses and costs.

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

247 (iii) "Interest expenses and cost" means amounts
248 directly or indirectly allowed as deductions for purposes of
249 determining taxable income under this chapter to the extent such
250 interest expenses and costs are directly or indirectly for,
251 related to, or in connection with the direct or indirect
252 acquisition, maintenance, management, ownership, sale, exchange or
253 disposition of intangible property.

254 (iv) "Related member" means an entity or person
255 that, with respect to the taxpayer during all or any portion of
256 the taxable year, is a related entity, a component member as
257 defined in the Internal Revenue Code, or is an entity or a person
258 to or from whom there is attribution of stock ownership in
259 accordance with Section 1563(e) of the Internal Revenue Code.

260 (v) "Related entity" means:

261 1. A stockholder who is an individual or a
262 member of the stockholder's family, as defined in regulations
263 prescribed by the commissioner, if the stockholder and the members
264 of the stockholder's family own, directly, indirectly,
265 beneficially or constructively, in the aggregate, at least fifty
266 percent (50%) of the value of the taxpayer's outstanding stock;

267 2. A stockholder, or a stockholder's
268 partnership, limited liability company, estate, trust or
269 corporation, if the stockholder and the stockholder's
270 partnerships, limited liability companies, estates, trusts and
271 corporations own, directly, indirectly, beneficially or
272 constructively, in the aggregate, at least fifty percent (50%) of
273 the value of the taxpayer's outstanding stock;

274 3. A corporation, or a party related to the
275 corporation in a manner that would require an attribution of stock
276 from the corporation to the party or from the party to the
277 corporation, if the taxpayer owns, directly, indirectly,
278 beneficially or constructively, at least fifty percent (50%) of
279 the value of the corporation's outstanding stock under regulation
280 prescribed by the commissioner;

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

284 (b) In computing net income, a taxpayer shall add back
285 otherwise deductible interest expenses and costs and intangible
286 expenses and costs directly or indirectly paid, accrued to or
287 incurred, in connection directly or indirectly with one or more
288 direct or indirect transactions with one or more related members.

289 (c) The adjustments required by this subsection shall
290 not apply to such portion of interest expenses and costs and
291 intangible expenses and costs that the taxpayer can establish
292 meets one (1) of the following:

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

296 (ii) The transaction giving rise to the interest
297 expenses and costs or intangible expenses and costs between the
298 taxpayer and related member was done primarily for a valid
299 business purpose other than the avoidance of taxes, and the
300 related member is not primarily engaged in the acquisition, use,
301 maintenance or management, ownership, sale, exchange or any other
302 disposition of intangible property.

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

307 (e) The commissioner may prescribe such regulations as
308 necessary or appropriate to carry out the purposes of this
309 subsection, including, but not limited to, clarifying definitions
310 of terms, rules of stock attribution, factoring and discount
311 transactions.

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

313 (a) The amount allowable for individual nonbusiness
314 itemized deductions for federal income tax purposes where the
315 individual is eligible to elect, for the taxable year, to itemize
316 deductions on his federal return except the following:

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

318 (ii) The deduction for gaming losses from gaming
319 establishments;

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

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

324 (b) In lieu of the individual nonbusiness itemized
325 deductions authorized in paragraph (a), for all purposes other

326 than ordinary and necessary expenses paid or incurred during the
327 taxable year in carrying on any trade or business, an optional
328 standard deduction of:

329 (i) Three Thousand Four Hundred Dollars
330 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
331 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
332 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
333 in the case of married individuals filing a joint or combined
334 return;

335 (ii) One Thousand Seven Hundred Dollars
336 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
337 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
338 Three Hundred Dollars (\$2,300.00) for each calendar year
339 thereafter in the case of married individuals filing separate
340 returns;

341 (iii) Three Thousand Four Hundred Dollars
342 (\$3,400.00) in the case of a head of family; or

343 (iv) Two Thousand Three Hundred Dollars
344 (\$2,300.00) in the case of an individual who is not married.

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

352 (c) An individual eligible for the itemized deductions
353 authorized in paragraph (a) of this subsection (3) or the standard
354 deduction authorized in paragraph (b) of this subsection (3) may
355 claim a deduction for expenses incurred for medical care or
356 prescribed drugs, or both, for the individual, the individual's
357 spouse or dependents, regardless of the amount of such expenses
358 incurred during the taxable year. An individual may not claim a

359 deduction for expenses that are compensated for by insurance or
360 otherwise. For the purposes of this paragraph (c), the terms
361 "medical care" and "prescribed drugs" have the same definitions as
362 those terms have in 26 USCS 213.

363 (d) A nonresident individual shall be allowed the same
364 individual nonbusiness deductions as are authorized for resident
365 individuals in * * * this subsection (3); however, the nonresident
366 individual is entitled only to that proportion of the individual
367 nonbusiness deductions as his net income from sources within the
368 State of Mississippi bears to his total or entire net income from
369 all sources.

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

372 **SECTION 2.** Nothing in this act shall affect or defeat any
373 claim, assessment, appeal, suit, right or cause of action for
374 taxes due or accrued under the income tax laws before the date on
375 which this act becomes effective, whether such claims,
376 assessments, appeals, suits or actions have been begun before the
377 date on which this act becomes effective or are begun thereafter;
378 and the provisions of the income tax laws are expressly continued
379 in full force, effect and operation for the purpose of the
380 assessment, collection and enrollment of liens for any taxes due
381 or accrued and the execution of any warrant under such laws before
382 the date on which this act becomes effective, and for the
383 imposition of any penalties, forfeitures or claims for failure to
384 comply with such laws.

385 **SECTION 3.** This act shall take effect and be in force from
386 and after January 1, 2005.