

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2707

1 AN ACT TO AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE ITEMIZED DEDUCTION ON THE FEDERAL INCOME TAX
3 RETURN FOR OTHER TAXES ALLOWED FOR FEDERAL PURPOSES IN LIEU OF
4 INCOME TAXES PAID MAY NOT BE UTILIZED AS AN INDIVIDUAL NONBUSINESS
5 DEDUCTION FOR STATE INCOME TAX PURPOSES; AND FOR RELATED PURPOSES.

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

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

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

11 (1) **Business deductions.**

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

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

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

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

58 (d) **Business losses.**

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

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

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

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

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

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

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

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

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

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

121 (i) The plan or trust be irrevocable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

241 4. Licensing fees; and

242 5. Other similar expenses and costs.

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

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

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

259 (v) "Related entity" means:

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

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

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

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

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

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

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

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

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

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

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

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

316 (i) The deduction for state income taxes paid or
317 other taxes allowed for federal purposes in lieu of state income
318 taxes paid;

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

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

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

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

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

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

342 (iii) Three Thousand Four Hundred Dollars
343 (\$3,400.00) in the case of a head of family; or

344 (iv) Two Thousand Three Hundred Dollars
345 (\$2,300.00) in the case of an individual who is not married.

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

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

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

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

362 **SECTION 2.** This act shall take effect and be in force from
363 and after January 1, 2005.