

By: Representative Mims

To: Ways and Means

HOUSE BILL NO. 828

1 AN ACT TO AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, TO
2 CONFORM THE STATE INCOME TAX LAW TO FEDERAL LAW TO PROVIDE THAT
3 FOR PROPERTY QUALIFYING FOR BONUS DEPRECIATION UNDER THE GULF
4 OPPORTUNITY ZONE ACT OF 2005, BONUS DEPRECIATION AND THE
5 DEPRECIATION METHOD USED FOR SUCH PROPERTY FOR FEDERAL PURPOSES
6 SHOULD BE USED FOR STATE PURPOSES; AND FOR RELATED 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.**

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

78 (ii) For property qualifying for bonus
79 depreciation under the Gulf Opportunity Zone Act of 2005, bonus
80 depreciation and the depreciation method used for such property
81 for federal purposes may be used for state purposes. The same
82 limitations that apply to depreciation for federal purposes shall
83 apply to depreciation for state purposes. This subparagraph (ii)
84 shall apply retroactively to include any depreciaton allowed for
85 such property for federal purposes from and after the effective
86 date of the Gulf Opportunity Zone Act of 2005.

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

94 (h) **Contributions or gifts.** Except as otherwise
95 provided in subsection (3)(a) of this section for individuals,

96 contributions or gifts made by corporations within the taxable
97 year to corporations, organizations, associations or institutions,
98 including Community Chest funds, foundations and trusts created
99 solely and exclusively for religious, charitable, scientific or
100 educational purposes, or for the prevention of cruelty to children
101 or animals, no part of the net earnings of which inure to the
102 benefit of any private stockholder or individual. This deduction
103 shall be allowed in an amount not to exceed twenty percent (20%)
104 of the net income. Such contributions or gifts shall be allowable
105 as deductions only if verified under rules and regulations
106 prescribed by the commissioner, with the approval of the Governor.
107 Contributions made in any form other than cash shall be allowed as
108 a deduction, subject to the limitations herein provided, in an
109 amount equal to the actual market value of the contributions at
110 the time the contribution is actually made and consummated.

111 (i) **Reserve funds - insurance companies.** In the case
112 of insurance companies the net additions required by law to be
113 made within the taxable year to reserve funds when such reserve
114 funds are maintained for the purpose of liquidating policies at
115 maturity.

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

119 (k) **Contributions to employee pension plans.**
120 Contributions made by an employer to a plan or a trust forming
121 part of a pension plan, stock bonus plan, disability or
122 death-benefit plan, or profit-sharing plan of such employer for
123 the exclusive benefit of some or all of his, their, or its
124 employees, or their beneficiaries, shall be deductible from his,
125 their, or its income only to the extent that, and for the taxable
126 year in which, the contribution is deductible for federal income
127 tax purposes under the Internal Revenue Code of 1986 and any other
128 provisions of similar purport in the Internal Revenue Laws of the

129 United States, and the rules, regulations, rulings and
130 determinations promulgated thereunder, provided that:

131 (i) The plan or trust be irrevocable.

132 (ii) The plan or trust constitute a part of a
133 pension plan, stock bonus plan, disability or death-benefit plan,
134 or profit-sharing plan for the exclusive benefit of some or all of
135 the employer's employees and/or officers, or their beneficiaries,
136 for the purpose of distributing the corpus and income of the plan
137 or trust to such employees and/or officers, or their
138 beneficiaries.

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

142 Contributions to all plans or to all trusts of real or
143 personal property (or real and personal property combined) or to
144 insured plans created under a retirement plan for which provision
145 has been made under the laws of the United States of America,
146 making such contributions deductible from income for federal
147 income tax purposes, shall be deductible only to the same extent
148 under the Income Tax Laws of the State of Mississippi.

149 (1) **Net operating loss carrybacks and carryovers.** A
150 net operating loss for any taxable year ending after December 31,
151 1993, and taxable years thereafter, shall be a net operating loss
152 carryback to each of the three (3) taxable years preceding the
153 taxable year of the loss. If the net operating loss for any
154 taxable year is not exhausted by carrybacks to the three (3)
155 taxable years preceding the taxable year of the loss, then there
156 shall be a net operating loss carryover to each of the fifteen
157 (15) taxable years following the taxable year of the loss
158 beginning with any taxable year after December 31, 1991.

159 For any taxable year ending after December 31, 1997, the
160 period for net operating loss carrybacks and net operating loss
161 carryovers shall be the same as those established by the Internal

162 Revenue Code and the rules, regulations, rulings and
163 determinations promulgated thereunder as in effect at the taxable
164 year end or on December 31, 2000, whichever is earlier.

165 A net operating loss for any taxable year ending after
166 December 31, 2001, and taxable years thereafter, shall be a net
167 operating loss carryback to each of the two (2) taxable years
168 preceding the taxable year of the loss. If the net operating loss
169 for any taxable year is not exhausted by carrybacks to the two (2)
170 taxable years preceding the taxable year of the loss, then there
171 shall be a net operating loss carryover to each of the twenty (20)
172 taxable years following the taxable year of the loss beginning
173 with any taxable year after the taxable year of the loss.

174 The term "net operating loss," for the purposes of this
175 paragraph, shall be the excess of the deductions allowed over the
176 gross income; provided, however, the following deductions shall
177 not be allowed in computing same:

178 (i) No net operating loss deduction shall be
179 allowed.

180 (ii) No personal exemption deduction shall be
181 allowed.

182 (iii) Allowable deductions which are not
183 attributable to taxpayer's trade or business shall be allowed only
184 to the extent of the amount of gross income not derived from such
185 trade or business.

186 Any taxpayer entitled to a carryback period as provided by
187 this paragraph may elect to relinquish the entire carryback period
188 with respect to a net operating loss for any taxable year ending
189 after December 31, 1991. The election shall be made in the manner
190 prescribed by the State Tax Commission and shall be made by the
191 due date, including extensions of time, for filing the taxpayer's
192 return for the taxable year of the net operating loss for which
193 the election is to be in effect. The election, once made for any
194 taxable year, shall be irrevocable for that taxable year.

195 (m) **Amortization of pollution or environmental control**
196 **facilities.** Allowance of deduction. Every taxpayer, at his
197 election, shall be entitled to a deduction for pollution or
198 environmental control facilities to the same extent as that
199 allowed under the Internal Revenue Code and the rules,
200 regulations, rulings and determinations promulgated thereunder.

201 (n) **Dividend distributions - real estate investment**
202 **trusts.** "Real estate investment trust" (hereinafter referred to
203 as REIT) shall have the meaning ascribed to such term in Section
204 856 of the federal Internal Revenue Code of 1986, as amended. A
205 REIT is allowed a dividend distributed deduction if the dividend
206 distributions meet the requirements of Section 857 or are
207 otherwise deductible under Section 858 or 860, federal Internal
208 Revenue Code of 1986, as amended. In addition:

209 (i) A dividend distributed deduction shall only be
210 allowed for dividends paid by a publicly traded REIT. A qualified
211 REIT subsidiary shall be allowed a dividend distributed deduction
212 if its owner is a publicly traded REIT.

213 (ii) Income generated from real estate contributed
214 or sold to a REIT by a shareholder or related party shall not give
215 rise to a dividend distributed deduction, unless the shareholder
216 or related party would have received the dividend distributed
217 deduction under this chapter.

218 (iii) A holding corporation receiving a dividend
219 from a REIT shall not be allowed the deduction in Section
220 27-7-15(4)(t).

221 (iv) Any REIT not allowed the dividend distributed
222 deduction in the federal Internal Revenue Code of 1986, as
223 amended, shall not be allowed a dividend distributed deduction
224 under this chapter.

225 The commissioner is authorized to promulgate rules and
226 regulations consistent with the provisions in Section 269 of the

227 federal Internal Revenue Code of 1986, as amended, so as to
228 prevent the evasion or avoidance of state income tax.

229 (o) **Contributions to college savings trust fund**
230 **accounts.** Contributions or payments to a Mississippi Affordable
231 College Savings Program account are deductible as provided under
232 Section 37-155-113. Payments made under a prepaid tuition
233 contract entered into under the Mississippi Prepaid Affordable
234 College Tuition Program are deductible as provided under Section
235 37-155-17.

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

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

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

240 1. Expenses, losses and costs for, related
241 to, or in connection directly or indirectly with the direct or
242 indirect acquisition, use, maintenance or management, ownership,
243 sale, exchange or any other disposition of intangible property to
244 the extent such amounts are allowed as deductions or costs in
245 determining taxable income under this chapter;

246 2. Expenses or losses related to or incurred
247 in connection directly or indirectly with factoring transactions
248 or discounting transactions;

249 3. Royalty, patent, technical and copyright
250 fees;

251 4. Licensing fees; and

252 5. Other similar expenses and costs.

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

256 (iii) "Interest expenses and cost" means amounts
257 directly or indirectly allowed as deductions for purposes of
258 determining taxable income under this chapter to the extent such
259 interest expenses and costs are directly or indirectly for,

260 related to, or in connection with the direct or indirect
261 acquisition, maintenance, management, ownership, sale, exchange or
262 disposition of intangible property.

263 (iv) "Related member" means an entity or person
264 that, with respect to the taxpayer during all or any portion of
265 the taxable year, is a related entity, a component member as
266 defined in the Internal Revenue Code, or is an entity or a person
267 to or from whom there is attribution of stock ownership in
268 accordance with Section 1563(e) of the Internal Revenue Code.

269 (v) "Related entity" means:

270 1. A stockholder who is an individual or a
271 member of the stockholder's family, as defined in regulations
272 prescribed by the commissioner, if the stockholder and the members
273 of the stockholder's family own, directly, indirectly,
274 beneficially or constructively, in the aggregate, at least fifty
275 percent (50%) of the value of the taxpayer's outstanding stock;

276 2. A stockholder, or a stockholder's
277 partnership, limited liability company, estate, trust or
278 corporation, if the stockholder and the stockholder's
279 partnerships, limited liability companies, estates, trusts and
280 corporations own, directly, indirectly, beneficially or
281 constructively, in the aggregate, at least fifty percent (50%) of
282 the value of the taxpayer's outstanding stock;

283 3. A corporation, or a party related to the
284 corporation in a manner that would require an attribution of stock
285 from the corporation to the party or from the party to the
286 corporation, if the taxpayer owns, directly, indirectly,
287 beneficially or constructively, at least fifty percent (50%) of
288 the value of the corporation's outstanding stock under regulation
289 prescribed by the commissioner;

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

293 (b) In computing net income, a taxpayer shall add back
294 otherwise deductible interest expenses and costs and intangible
295 expenses and costs directly or indirectly paid, accrued to or
296 incurred, in connection directly or indirectly with one or more
297 direct or indirect transactions with one or more related members.

298 (c) The adjustments required by this subsection shall
299 not apply to such portion of interest expenses and costs and
300 intangible expenses and costs that the taxpayer can establish
301 meets one (1) of the following:

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

305 (ii) The transaction giving rise to the interest
306 expenses and costs or intangible expenses and costs between the
307 taxpayer and related member was done primarily for a valid
308 business purpose other than the avoidance of taxes, and the
309 related member is not primarily engaged in the acquisition, use,
310 maintenance or management, ownership, sale, exchange or any other
311 disposition of intangible property.

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

316 (e) The commissioner may prescribe such regulations as
317 necessary or appropriate to carry out the purposes of this
318 subsection, including, but not limited to, clarifying definitions
319 of terms, rules of stock attribution, factoring and discount
320 transactions.

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

322 (a) The amount allowable for individual nonbusiness
323 itemized deductions for federal income tax purposes where the
324 individual is eligible to elect, for the taxable year, to itemize
325 deductions on his federal return except the following:

326 (i) The deduction for state income taxes paid or
327 other taxes allowed for federal purposes in lieu of state income
328 taxes paid;

329 (ii) The deduction for gaming losses from gaming
330 establishments;

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

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

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

340 (i) Three Thousand Four Hundred Dollars
341 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
342 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
343 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
344 in the case of married individuals filing a joint or combined
345 return;

346 (ii) One Thousand Seven Hundred Dollars
347 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
348 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
349 Three Hundred Dollars (\$2,300.00) for each calendar year
350 thereafter in the case of married individuals filing separate
351 returns;

352 (iii) Three Thousand Four Hundred Dollars
353 (\$3,400.00) in the case of a head of family; or

354 (iv) Two Thousand Three Hundred Dollars
355 (\$2,300.00) in the case of an individual who is not married.

356 In the case of a husband and wife living together, having
357 separate incomes, and filing combined returns, the standard
358 deduction authorized may be divided in any manner they choose. In

359 the case of separate returns by a husband and wife, the standard
360 deduction shall not be allowed to either if the taxable income of
361 one of the spouses is determined without regard to the standard
362 deduction.

363 (c) A nonresident individual shall be allowed the same
364 individual nonbusiness deductions as are authorized for resident
365 individuals in paragraph (a) or (b) of this subsection; however,
366 the nonresident individual is entitled only to that proportion of
367 the individual nonbusiness deductions as his net income from
368 sources within the State of Mississippi bears to his total or
369 entire net income from 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.** This act shall take effect and be in force from
373 and after its passage.