

By: Representative Smith (39th)

To: Ways and Means

HOUSE BILL NO. 970

1 AN ACT TO AMEND SECTION 27-7-5, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT NET INCOME OF NONRESIDENTS DERIVED FROM PROPERTY,
3 ACTIVITY AND OTHER SOURCES WITHIN MISSISSIPPI IS SUBJECT TO THE
4 STATE INCOME TAX; TO AMEND SECTION 27-7-23, MISSISSIPPI CODE OF
5 1972, TO REVISE THE DEFINITION OF THE TERM "DOING BUSINESS" FOR
6 PURPOSES OF THE STATE INCOME TAX LAW; TO AMEND SECTION 27-7-17,
7 MISSISSIPPI CODE OF 1972, TO DEFINE THE TERM "VALID BUSINESS
8 PURPOSE" UNDER THE STATE INCOME TAX LAW FOR PURPOSES OF
9 RESTRICTIONS ON THE DEDUCTION OF CERTAIN INTANGIBLE EXPENSES AND
10 INTEREST INCURRED IN CONNECTION WITH TRANSACTIONS WITH RELATED
11 MEMBERS AND TO REVISE CERTAIN PROVISIONS REGARDING THE DEDUCTION;
12 AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 27-7-5, Mississippi Code of 1972, is
15 amended as follows:

16 27-7-5. (1) There is hereby assessed and levied, to be
17 collected and paid as hereinafter provided, for the calendar year
18 1983 and fiscal years ending during the calendar year 1983 and all
19 taxable years thereafter, upon the entire net income of every
20 resident individual, corporation, association, trust or estate, in
21 excess of the credits provided, a tax at the following rates:

22 On the first Five Thousand Dollars (\$5,000.00) of taxable
23 income, or any part thereof, at the rate of three percent (3%);

24 On the next Five Thousand Dollars (\$5,000.00) of taxable
25 income, or any part thereof, at the rate of four percent (4%); and

26 On all taxable income in excess of Ten Thousand Dollars
27 (\$10,000.00), at the rate of five percent (5%).

28 (2) An S corporation, as defined in Section 27-8-3(1)(g),
29 shall not be subject to the income tax imposed under this section.

30 (3) A like tax is hereby imposed to be assessed, collected
31 and paid annually, except as hereinafter provided, at the rate



32 specified in this section and as hereinafter provided, upon and
33 with respect to the entire net income derived from property,
34 activity or other sources within Mississippi, including all
35 property owned or sold, and from every business, trade or
36 occupation carried on in this state by individuals, corporations,
37 partnerships, trusts or estates, not residents of the State of
38 Mississippi.

39 (4) In the case of taxpayers having a fiscal year beginning
40 in the calendar year 1982 and ending after the first day of
41 January 1983, the tax due for that taxable year shall be
42 determined by:

43 (a) Computing for the full fiscal year the amount of
44 tax that would be due under the rates in effect for the calendar
45 year 1982; and

46 (b) Computing for the full fiscal year the amount of
47 tax that would be due under the rates in effect for the calendar
48 year 1983; and

49 (c) Applying to the tax computed under paragraph (a)
50 the ratio which the number of months falling within the earlier
51 calendar year bears to the total number of months in the fiscal
52 year; and

53 (d) Applying to the tax computed under paragraph (b)
54 the ratio which the number of months falling within the later
55 calendar year bears to the total number of months within the
56 fiscal year; and

57 (e) Adding to the tax determined under paragraph (c)
58 the tax determined under paragraph (d) the sum of which shall be
59 the amount of tax due for the fiscal year.

60 **SECTION 2.** Section 27-7-23, Mississippi Code of 1972, is
61 amended as follows:

62 27-7-23. (a) **Definitions.**

63 (1) "Doing business" means the operation of any
64 business enterprise or activity that results in financial profit



65 or economic gain from property, activity or other sources within
66 Mississippi, including, but not limited to, the following:

67 (A) The regular maintenance of an office or other
68 place of business in Mississippi; or

69 (B) The regular maintenance in Mississippi of an
70 inventory of merchandise or material for sale, distribution or
71 manufacture, regardless of whether kept on the premises of the
72 taxpayer or otherwise; or

73 (C) The regular sale or distribution of products
74 or services to customers in Mississippi that receive the products
75 or services in Mississippi; or

76 (D) The regular rendering of service to clients or
77 customers in Mississippi in person or by agents, employees or
78 independent contractors conducting business in Mississippi; or

79 (E) The regular solicitation of business from
80 potential customers in Mississippi; or

81 (F) The owning, renting or operating of business
82 or income-producing property, real or personal, in Mississippi; or

83 (G) The issuance of credit, debit or travel and
84 entertainment cards to customers in Mississippi; or

85 (H) The performing of contracts, prime or sublet
86 work, for the construction, repair or renovation of real or
87 personal property in Mississippi; or

88 (I) The regular performance of services outside
89 Mississippi from which the benefits are received within
90 Mississippi; or

91 (J) Entering into franchising or licensing
92 agreements, selling or otherwise disposing of franchises and
93 licenses by a franchisor or licensor to its franchisee or licensee
94 in Mississippi; or

95 (K) The regular conduct of transactions with
96 customers in Mississippi involving intangible personal property,
97 including, but not limited to, loans or the extension of credit,



98 resulting in receipts flowing to the nonresident or foreign
99 taxpayer from within Mississippi.

100 (2) "Business income" means income of any type or
101 class, and from any activity that meets the relationship described
102 in the transactional test or the functional test described in this
103 paragraph (2). The classification of income by occasionally used
104 labels, including, but not limited to, manufacturing income,
105 compensation for services, sales income interest, dividends,
106 rents, royalties, gains, operating income, and nonoperating income
107 shall not be considered when determining whether income is
108 business or nonbusiness income. All income of the taxpayer is
109 business income unless clearly classifiable as nonbusiness income.
110 A taxpayer seeking to overcome a classification of income as
111 business income must establish by a preponderance of the evidence
112 that the income has been incorrectly classified.

113 (A) Transactional test. Business income includes
114 income arising from transactions and activity in the regular
115 course of the taxpayer's trade or business.

116 (i) If the transaction or activity is in the
117 regular course of the taxpayer's trade or business, part of which
118 trade or business is conducted within Mississippi, the resulting
119 income of the transaction or activity is business income for
120 Mississippi. Income may be business income even though the actual
121 transaction or activity that gives rise to the income does not
122 occur in Mississippi.

123 (ii) For a transaction or activity to be in
124 the regular course of the taxpayer's trade or business, the
125 transactions or activity need not be one that frequently occurs in
126 the trade or business, although most frequently occurring
127 transactions or activities shall be considered to be in the
128 regular course of a trade or business. It is sufficient to
129 classify a transaction or activity as being in the regular course
130 of a trade or business if it is reasonable to conclude



131 transactions of that type are customary in the kind of trade or
132 business being conducted or are within the scope of what the trade
133 or business does.

134 (B) Functional test. Business income includes
135 income from tangible and intangible property if the acquisition,
136 management and/or disposition of the property constitute integral
137 parts of the taxpayer's regular trade or business operation.

138 (i) Under the functional test, business
139 income need not be derived from transactions or activities that
140 are in the regular course of the taxpayer's own particular trade
141 or business. It shall be sufficient if the property from which
142 the income is derived is or was an integral, functional, necessary
143 or operative component of the taxpayer's trade or business
144 operations deriving income from property, activity or other
145 sources within this state.

146 (ii) Income that is derived from isolated
147 sales, leases, assignments, licenses and other infrequently
148 occurring dispositions, transfers or transactions involving
149 property, including transactions made in liquidation or the
150 winding up of business is business income if the property is or
151 was used in the taxpayer's trade or business operation. Income
152 from the licensing of intangible assets, such as patents,
153 copyrights, trademarks, service marks, goodwill, know-how, trade
154 secrets and similar assets, that were developed or acquired for
155 use by the taxpayer in his trade or business operations,
156 constitute business income whether the licensing itself
157 constituted the operation of a trade or business and whether the
158 taxpayer remains in the same trade or business from or for which
159 the intangible asset was developed or acquired.

160 (iii) Under the functional test, income from
161 intangible property is business income when the intangible
162 property serves an operating function, as opposed to solely an
163 investment function. The relevant inquiry shall focus on whether



164 the property is or was held in furtherance of the taxpayer's trade
165 or business, that is, on the objective characteristics of the
166 intangible property's use or acquisition and its relation to the
167 taxpayer and the taxpayer's activities. The functional test is
168 not satisfied where the holding of the property is limited solely
169 to an investment function as in the case where the holding of the
170 property is limited to mere financial betterment of the taxpayer
171 in general.

172 (iv) If the property is or was held in
173 furtherance of the taxpayer's trade or business beyond mere
174 financial betterment, then income from the property may be
175 business income even though the actual transaction or activity
176 involving the property that gives rise to the income does not
177 occur in Mississippi.

178 (v) If, with respect to an item of property,
179 a taxpayer takes a deduction from business income that is
180 apportioned to Mississippi, or includes that item of property in
181 the property factor, it is presumed that the item of property is
182 or was integral to the taxpayer's trade or business operations.
183 No presumption arises from the absence of any of this action.

184 (vi) Application of the functional test is
185 generally unaffected by the form of the property. Income arising
186 from intangible property is business income when the intangible
187 property itself or the underlying value of the intangible property
188 is or was an integral, functional, necessary or operative
189 component to the taxpayer's trade or business operation.
190 Therefore, while treatment of income derived from transactions
191 involving intangible property as business income may be supported
192 by a finding that the issuer of the intangible property and the
193 taxpayer are engaged in the same trade or business, establishment
194 of such a relationship is not the exclusive basis for concluding
195 that the income constitutes business income. It is sufficient to
196 support a finding of business income if the holding of the



197 intangible property served an operational rather than an
198 investment function.

199 (3) "Nonbusiness income" means all income that does not
200 meet the definition of business income.

201 (4) "Commercial domicile" means the principal place
202 from which the trade or business of the taxpayer is directed or
203 managed.

204 (5) "State" means any state of the United States, the
205 District of Columbia, the Commonwealth of Puerto Rico, any
206 territory or possession of the United States, and any foreign
207 country or political subdivision thereof.

208 (b) **Nonresident individuals, partnerships, trusts and**
209 **estates.**

210 (1) The tax imposed by this article shall apply to the
211 entire net income of a taxable nonresident derived from
212 employment, trade, business, professional service or personal
213 service in Mississippi, or otherwise doing business in
214 Mississippi as defined in subsection (a) (1) of this section,
215 including the rental of real or personal property located within
216 this state or for use herein and including the sale or exchange or
217 other disposition of tangible or intangible property having a
218 situs in Mississippi.

219 (2) Income derived from trade, business or other
220 commercial activity shall be taxed to the extent that it is
221 derived from property, activity or other sources within this
222 state. Mississippi net income shall be determined in the manner
223 prescribed by the commissioner for the allocation and/or
224 apportionment of income of foreign corporations having income from
225 sources both within and without the state.

226 (3) A taxable nonresident shall be allowed to deduct
227 expenses, interest, taxes, losses, bad debts, depreciation and
228 similar business expenses only to the extent that they are
229 allowable under this article and are attributable to the



230 production of income allocable to and taxable by the State of
231 Mississippi. As to allowable deductions essentially personal in
232 nature, such as contributions to charitable organizations, medical
233 expenses, taxes, interest and the optional standard deduction,
234 such taxable nonresident shall be allowed deductions therefor in
235 the ratio that the net income from sources within Mississippi
236 bears to the total net income from all sources of such taxable
237 nonresident, computed as if such taxable nonresident was a
238 resident of Mississippi.

239 (c) **Foreign corporations, associations, organizations and**
240 **other entities.**

241 (1) Corporations and organizations required to file.
242 All foreign corporations and other organizations which have
243 obtained a certificate of authority from the Secretary of State to
244 do business in Mississippi, or corporations or organizations which
245 are in fact doing business in Mississippi, are subject to the
246 income tax levy and are required to file annual income tax returns
247 unless the corporation or organization is specifically exempt from
248 tax by this article.

249 (2) Allocation and apportionment of income. Except as
250 provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and
251 27-7-24.7, Mississippi Code of 1972, any corporation or
252 organization having business income from business activity which
253 is taxable both within and without this state shall allocate and
254 apportion its net business income as prescribed by the
255 commissioner. Income from services shall be apportioned to the
256 state where the benefits of the services are received. If the
257 business income of the corporation is derived solely from property
258 owned, business done or services performed in this state and the
259 corporation is not taxable in another state, the entire business
260 income shall be allocated to this state. A corporation is taxable
261 in another state if, in that state the corporation is subject to a
262 net income tax, or a franchise tax measured by net income, or if



263 that state has jurisdiction to subject the corporation to a net
264 income tax regardless of whether the state does or does not
265 subject the corporation to a net income tax.

266 (3) Nonbusiness income. Rents and royalties from real
267 or tangible personal property, capital gains, interest, dividends,
268 or patent or copyright royalties, to the extent that they
269 constitute nonbusiness income, shall be allocated as follows:

270 (A) Net rents and royalties from real property are
271 allocable to the state in which the property is located.

272 (B) Net rents and royalties from tangible personal
273 property are allocable to the state in which the property is used,
274 or to this state in their entirety if the corporation's commercial
275 domicile is in this state and the corporation is not organized
276 under the laws of or taxable in the state in which the property is
277 utilized.

278 (C) Capital gains and losses from sales of real
279 property are allocable to the state in which the property is
280 located.

281 (D) Capital gains and losses from sales of
282 tangible personal property are allocable to the state in which the
283 property is located, or to this state if the corporation's
284 commercial domicile is in this state and the corporation is not
285 taxable in the state in which the property had a situs.

286 (E) Capital gains and losses from sales of
287 intangible personal property are allocable to the state of the
288 corporation's commercial domicile.

289 (F) Interest and dividends are allocable to the
290 state of the corporation's commercial domicile.

291 (G) Patent and copyright royalties are allocable
292 to the state in which the patent or copyright is utilized by the
293 payer, or to this state if and to the extent that the patent or
294 copyright is utilized by the payer in a state in which the



295 corporation is not taxable and the corporation's commercial
296 domicile is in this state.

297 (H) Any other nonbusiness income shall be
298 allocated as prescribed by the commissioner.

299 (I) All expenses connected with earning
300 nonbusiness income, such as interest, taxes, general and
301 administrative expenses and such other expenses relating to the
302 production of nonbusiness income, shall be deducted from gross
303 nonbusiness income. Nonbusiness interest expense shall be
304 computed by using the ratio of nonbusiness assets to total assets
305 applied to total interest expense.

306 (d) **Foreign lenders.**

307 (1) In the case of any foreign lender, (corporation,
308 association, organization, individual, partnership, trusts or
309 estates), other than: (A) a foreign insurance company subject to
310 certification by the Commissioner of Insurance, as provided by
311 Section 83-21-1 et seq.; or (B) a foreign lender qualified under
312 the general laws of this state to do business herein; or (C) a
313 foreign lender which maintains an office or place of business
314 within this state; or (D) lenders that sold properties in this
315 state and financed such sale and reported on the installment
316 method, interest income received or accrued on or after January 1,
317 1977, from loans secured by real estate or from lending on the
318 security of real estate located within this state shall be
319 excluded from Mississippi gross income and exempt from the
320 Mississippi income tax levy and the reporting requirements.

321 (2) In the case of any foreign lender exempted in
322 paragraph (1) of this subsection, interest income received on any
323 loan finalized or consummated after January 1, 1977, shall be
324 excluded from Mississippi gross income and the net profits derived
325 therefrom shall be exempt from the Mississippi income tax levy for
326 the life of such loan.



327 (e) **Insurance companies.** Insurance companies, other than
328 life insurance companies, deriving premium income from within and
329 without the state, may determine their Mississippi net income from
330 underwriting by apportioning to this state a part of their total
331 net underwriting income by such processes or formulas of general
332 apportionment as are prescribed by the commissioner; provided that
333 a company adopting this method of reporting for any year must
334 adhere to said method of reporting for subsequent years, unless
335 permission is granted by the commissioner to change to a different
336 method of reporting; and provided that all affiliated companies of
337 the same group shall use the same method of reporting.

338 (f) **Bond requirements.** Any individual or corporation
339 subject to the tax imposed by this article, engaged in the
340 business of performing contracts which may require the payment of
341 net income taxes, may be required by the commissioner, before
342 entering into the performance of any contract or contracts the
343 consideration of which is more than Ten Thousand Dollars
344 (\$10,000.00), to execute and file a good and valid bond with a
345 surety company authorized to do business in this state, or with
346 sufficient sureties to be approved by the commissioner,
347 conditioned that all taxes which may accrue to the State of
348 Mississippi will be paid when due. Provided, however, that such
349 bond shall not exceed five percent (5%) of the total contracts
350 entered into during the taxable period, and, provided further,
351 that any taxpayer, in lieu of furnishing such bond, may pay the
352 maximum sum required herein as advance payment of taxes due on the
353 net income realized from any contract or contracts performed or
354 completed in this state.

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

357 27-7-17. In computing taxable income, there shall be allowed
358 as deductions:

359 (1) **Business deductions.**



360 (a) **Business expenses.** All the ordinary and necessary
361 expenses paid or incurred during the taxable year in carrying on
362 any trade or business, including a reasonable allowance for
363 salaries or other compensation for personal services actually
364 rendered; nonreimbursable traveling expenses incident to current
365 employment, including a reasonable amount expended for meals and
366 lodging while away from home in the pursuit of a trade or
367 business; and rentals or other payments required to be made as a
368 condition of the continued use or possession, for purposes of the
369 trade or business of property to which the taxpayer has not taken
370 or is not taking title or in which he had no equity. Expense
371 incurred in connection with earning and distributing nontaxable
372 income is not an allowable deduction. Limitations on
373 entertainment expenses shall conform to the provisions of the
374 Internal Revenue Code of 1986.

375 (b) **Interest.** All interest paid or accrued during the
376 taxable year on business indebtedness, except interest upon the
377 indebtedness for the purchase of tax-free bonds, or any stocks,
378 the dividends from which are nontaxable under the provisions of
379 this article; provided, however, in the case of securities
380 dealers, interest payments or accruals on loans, the proceeds of
381 which are used to purchase tax-exempt securities, shall be
382 deductible if income from otherwise tax-free securities is
383 reported as income. Investment interest expense shall be limited
384 to investment income. Interest expense incurred for the purchase
385 of treasury stock, to pay dividends, or incurred as a result of an
386 undercapitalized affiliated corporation may not be deducted unless
387 an ordinary and necessary business purpose can be established to
388 the satisfaction of the commissioner. For the purposes of this
389 paragraph, the phrase "interest upon the indebtedness for the
390 purchase of tax-free bonds" applies only to the indebtedness
391 incurred for the purpose of directly purchasing tax-free bonds and
392 does not apply to any other indebtedness incurred in the regular



393 course of the taxpayer's business. Any corporation, association,
394 organization or other entity taxable under Section 27-7-23(c)
395 shall allocate interest expense as provided in Section
396 27-7-23(c) (3) (I).

397 (c) **Taxes.** Taxes paid or accrued within the taxable
398 year, except state and federal income taxes, excise taxes based on
399 or measured by net income, estate and inheritance taxes, gift
400 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
401 use taxes unless incurred as an item of expense in a trade or
402 business or in the production of taxable income. In the case of
403 an individual, taxes permitted as an itemized deduction under the
404 provisions of subsection (3) (a) of this section are to be claimed
405 thereunder.

406 (d) **Business losses.**

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

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

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

419 (f) **Depreciation.** A reasonable allowance for
420 exhaustion, wear and tear of property used in the trade or
421 business, or rental property, and depreciation upon buildings
422 based upon their reasonable value as of March 16, 1912, if
423 acquired prior thereto, and upon cost if acquired subsequent to
424 that date.



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

432 (h) **Contributions or gifts.** Except as otherwise
433 provided in paragraph (p) of this subsection or subsection (3)(a)
434 of this section for individuals, contributions or gifts made by
435 corporations within the taxable year to corporations,
436 organizations, associations or institutions, including Community
437 Chest funds, foundations and trusts created solely and exclusively
438 for religious, charitable, scientific or educational purposes, or
439 for the prevention of cruelty to children or animals, no part of
440 the net earnings of which inure to the benefit of any private
441 stockholder or individual. This deduction shall be allowed in an
442 amount not to exceed twenty percent (20%) of the net income. Such
443 contributions or gifts shall be allowable as deductions only if
444 verified under rules and regulations prescribed by the
445 commissioner, with the approval of the Governor. Contributions
446 made in any form other than cash shall be allowed as a deduction,
447 subject to the limitations herein provided, in an amount equal to
448 the actual market value of the contributions at the time the
449 contribution is actually made and consummated.

450 (i) **Reserve funds - insurance companies.** In the case
451 of insurance companies the net additions required by law to be
452 made within the taxable year to reserve funds when such reserve
453 funds are maintained for the purpose of liquidating policies at
454 maturity.

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



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

459 Contributions made by an employer to a plan or a trust forming
460 part of a pension plan, stock bonus plan, disability or
461 death-benefit plan, or profit-sharing plan of such employer for
462 the exclusive benefit of some or all of his, their, or its
463 employees, or their beneficiaries, shall be deductible from his,
464 their, or its income only to the extent that, and for the taxable
465 year in which, the contribution is deductible for federal income
466 tax purposes under the Internal Revenue Code of 1986 and any other
467 provisions of similar purport in the Internal Revenue Laws of the
468 United States, and the rules, regulations, rulings and
469 determinations promulgated thereunder, provided that:

470 (i) The plan or trust be irrevocable.

471 (ii) The plan or trust constitute a part of a
472 pension plan, stock bonus plan, disability or death-benefit plan,
473 or profit-sharing plan for the exclusive benefit of some or all of
474 the employer's employees and/or officers, or their beneficiaries,
475 for the purpose of distributing the corpus and income of the plan
476 or trust to such employees and/or officers, or their
477 beneficiaries.

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

481 Contributions to all plans or to all trusts of real or
482 personal property (or real and personal property combined) or to
483 insured plans created under a retirement plan for which provision
484 has been made under the laws of the United States of America,
485 making such contributions deductible from income for federal
486 income tax purposes, shall be deductible only to the same extent
487 under the Income Tax Laws of the State of Mississippi.

488 (l) **Net operating loss carrybacks and carryovers.** A
489 net operating loss for any taxable year ending after December 31,
490 1993, and taxable years thereafter, shall be a net operating loss



491 carryback to each of the three (3) taxable years preceding the
492 taxable year of the loss. If the net operating loss for any
493 taxable year is not exhausted by carrybacks to the three (3)
494 taxable years preceding the taxable year of the loss, then there
495 shall be a net operating loss carryover to each of the fifteen
496 (15) taxable years following the taxable year of the loss
497 beginning with any taxable year after December 31, 1991.

498 For any taxable year ending after December 31, 1997, the
499 period for net operating loss carrybacks and net operating loss
500 carryovers shall be the same as those established by the Internal
501 Revenue Code and the rules, regulations, rulings and
502 determinations promulgated thereunder as in effect at the taxable
503 year end or on December 31, 2000, whichever is earlier.

504 A net operating loss for any taxable year ending after
505 December 31, 2001, and taxable years thereafter, shall be a net
506 operating loss carryback to each of the two (2) taxable years
507 preceding the taxable year of the loss. If the net operating loss
508 for any taxable year is not exhausted by carrybacks to the two (2)
509 taxable years preceding the taxable year of the loss, then there
510 shall be a net operating loss carryover to each of the twenty (20)
511 taxable years following the taxable year of the loss beginning
512 with any taxable year after the taxable year of the loss.

513 The term "net operating loss," for the purposes of this
514 paragraph, shall be the excess of the deductions allowed over the
515 gross income; provided, however, the following deductions shall
516 not be allowed in computing same:

517 (i) No net operating loss deduction shall be
518 allowed.

519 (ii) No personal exemption deduction shall be
520 allowed.

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



523 to the extent of the amount of gross income not derived from such
524 trade or business.

525 Any taxpayer entitled to a carryback period as provided by
526 this paragraph may elect to relinquish the entire carryback period
527 with respect to a net operating loss for any taxable year ending
528 after December 31, 1991. The election shall be made in the manner
529 prescribed by the Department of Revenue and shall be made by the
530 due date, including extensions of time, for filing the taxpayer's
531 return for the taxable year of the net operating loss for which
532 the election is to be in effect. The election, once made for any
533 taxable year, shall be irrevocable for that taxable year.

534 (m) **Amortization of pollution or environmental control**
535 **facilities.** Allowance of deduction. Every taxpayer, at his
536 election, shall be entitled to a deduction for pollution or
537 environmental control facilities to the same extent as that
538 allowed under the Internal Revenue Code and the rules,
539 regulations, rulings and determinations promulgated thereunder.

540 (n) **Dividend distributions - real estate investment**
541 **trusts.** "Real estate investment trust" (hereinafter referred to
542 as REIT) shall have the meaning ascribed to such term in Section
543 856 of the federal Internal Revenue Code of 1986, as amended. A
544 REIT is allowed a dividend distributed deduction if the dividend
545 distributions meet the requirements of Section 857 or are
546 otherwise deductible under Section 858 or 860, federal Internal
547 Revenue Code of 1986, as amended. In addition:

548 (i) A dividend distributed deduction shall only be
549 allowed for dividends paid by a publicly traded REIT. A qualified
550 REIT subsidiary shall be allowed a dividend distributed deduction
551 if its owner is a publicly traded REIT.

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



555 or related party would have received the dividend distributed
556 deduction under this chapter.

557 (iii) A holding corporation receiving a dividend
558 from a REIT shall not be allowed the deduction in Section
559 27-7-15(4) (t).

560 (iv) Any REIT not allowed the dividend distributed
561 deduction in the federal Internal Revenue Code of 1986, as
562 amended, shall not be allowed a dividend distributed deduction
563 under this chapter.

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

568 (o) **Contributions to college savings trust fund**
569 **accounts.** Contributions or payments to a Mississippi Affordable
570 College Savings Program account are deductible as provided under
571 Section 37-155-113. Payments made under a prepaid tuition
572 contract entered into under the Mississippi Prepaid Affordable
573 College Tuition Program are deductible as provided under Section
574 37-155-17.

575 (p) **Contributions of human pharmaceutical products.** To
576 the extent that a "major supplier" as defined in Section
577 27-13-13(2) (d) contributes human pharmaceutical products in excess
578 of Two Hundred Fifty Million Dollars (\$250,000,000.00) as
579 determined under Section 170 of the Internal Revenue Code, the
580 charitable contribution limitation associated with those donations
581 shall follow the federal limitation but cannot result in the
582 Mississippi net income being reduced below zero.

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

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

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



587 1. Expenses, losses and costs for, related
588 to, or in connection directly or indirectly with the direct or
589 indirect acquisition, use, maintenance or management, ownership,
590 sale, exchange or any other disposition of intangible property to
591 the extent such amounts are allowed as deductions or costs in
592 determining taxable income under this chapter;

593 2. Expenses or losses related to or incurred
594 in connection directly or indirectly with factoring transactions
595 or discounting transactions;

596 3. Royalty, patent, technical and copyright
597 fees;

598 4. Licensing fees; and

599 5. Other similar expenses and costs.

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

603 (iii) "Interest expenses and cost" means amounts
604 directly or indirectly allowed as deductions for purposes of
605 determining taxable income under this chapter to the extent such
606 interest expenses and costs are directly or indirectly for,
607 related to, or in connection with the direct or indirect
608 acquisition, maintenance, management, ownership, sale, exchange or
609 disposition of intangible property.

610 (iv) "Related member" means an entity or person
611 that, with respect to the taxpayer during all or any portion of
612 the taxable year, is a related entity, a component member as
613 defined in the Internal Revenue Code, or is an entity or a person
614 to or from whom there is attribution of stock ownership in
615 accordance with Section 1563(e) of the Internal Revenue Code.

616 (v) "Related entity" means:

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



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

623 2. A stockholder, or a stockholder's
624 partnership, limited liability company, estate, trust or
625 corporation, if the stockholder and the stockholder's
626 partnerships, limited liability companies, estates, trusts and
627 corporations own, directly, indirectly, beneficially or
628 constructively, in the aggregate, at least fifty percent (50%) of
629 the value of the taxpayer's outstanding stock;

630 3. A corporation, or a party related to the
631 corporation in a manner that would require an attribution of stock
632 from the corporation to the party or from the party to the
633 corporation, if the taxpayer owns, directly, indirectly,
634 beneficially or constructively, at least fifty percent (50%) of
635 the value of the corporation's outstanding stock under regulation
636 prescribed by the commissioner;

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

640 (vi) "Valid business purpose" means one or more
641 business purposes that alone or in combination constitute the
642 motivation for some business activity or transaction, which
643 activity or transaction improves, apart from tax effects, the
644 economic position of the taxpayer, as further defined by
645 regulation.

646 (b) In computing net income, a taxpayer shall add back
647 otherwise deductible interest expenses and costs and intangible
648 expenses and costs directly or indirectly paid, accrued to or
649 incurred, in connection directly or indirectly with one or more
650 direct or indirect transactions with one or more related members.

651 (c) The adjustments required by this subsection shall
652 not apply to such portion of interest expenses and costs and



653 intangible expenses and costs that the taxpayer can establish
654 meets one (1) of the following:

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

658 (ii) The transaction giving rise to the interest
659 expenses and costs or intangible expenses and costs must have a
660 valid business purpose and economic substance and contain terms
661 and conditions comparable to a similar arms-length transaction
662 between unrelated parties. Tax avoidance must not be a
663 significant motivation of entering into the transaction. The
664 related member involved in the transaction must not be primarily
665 engaged in the acquisition, use, maintenance or management,
666 ownership, sale, exchange or any other disposition of intangible
667 property. If the development, purchase of or other costs related
668 to the intangible property giving rise to the payment were shared
669 in any way by the party making the payment, the party making the
670 payment must have been compensated at a fair market, arms-length
671 price for such costs. If the party making the payment was not so
672 compensated, the interest expenses and costs or intangible
673 expenses and cost are not deductible.

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

678 (e) The commissioner may prescribe such regulations as
679 necessary or appropriate to carry out the purposes of this
680 subsection, including, but not limited to, clarifying definitions
681 of terms, rules of stock attribution, factoring and discount
682 transactions.

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

684 (a) The amount allowable for individual nonbusiness
685 itemized deductions for federal income tax purposes where the



686 individual is eligible to elect, for the taxable year, to itemize
687 deductions on his federal return except the following:

688 (i) The deduction for state income taxes paid or
689 other taxes allowed for federal purposes in lieu of state income
690 taxes paid;

691 (ii) The deduction for gaming losses from gaming
692 establishments;

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

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

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

702 (i) Three Thousand Four Hundred Dollars
703 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
704 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
705 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
706 in the case of married individuals filing a joint or combined
707 return;

708 (ii) One Thousand Seven Hundred Dollars
709 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
710 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
711 Three Hundred Dollars (\$2,300.00) for each calendar year
712 thereafter in the case of married individuals filing separate
713 returns;

714 (iii) Three Thousand Four Hundred Dollars
715 (\$3,400.00) in the case of a head of family; or

716 (iv) Two Thousand Three Hundred Dollars
717 (\$2,300.00) in the case of an individual who is not married.



718 In the case of a husband and wife living together, having
719 separate incomes, and filing combined returns, the standard
720 deduction authorized may be divided in any manner they choose. In
721 the case of separate returns by a husband and wife, the standard
722 deduction shall not be allowed to either if the taxable income of
723 one of the spouses is determined without regard to the standard
724 deduction.

725 (c) A nonresident individual shall be allowed the same
726 individual nonbusiness deductions as are authorized for resident
727 individuals in paragraph (a) or (b) of this subsection; however,
728 the nonresident individual is entitled only to that proportion of
729 the individual nonbusiness deductions as his net income from
730 sources within the State of Mississippi bears to his total or
731 entire net income from all sources.

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

734 **SECTION 4.** This act shall take effect and be in force from
735 and after January 1, 2012.

