

By: Senator(s) Watson, McDaniel, Collins

To: Education; Finance

SENATE BILL NO. 2400

1 AN ACT ENTITLED THE "MISSISSIPPI OPPORTUNITY SCHOLARSHIP AND
2 EDUCATION IMPROVEMENT TAX CREDIT ACT OF 2012"; TO PROVIDE
3 DEFINITIONS; TO PROVIDE AN OPPORTUNITY SCHOLARSHIP PROGRAM UNDER
4 WHICH LOW-INCOME AND MIDDLE-INCOME STUDENTS IN PERSISTENTLY LOW
5 ACHIEVING SCHOOLS MAY USE THE STATE PAYMENTS TO THEIR HOME SCHOOL
6 DISTRICT TO PAY TUITION TO ATTEND A NONRESIDENT PUBLIC SCHOOL OR A
7 PARTICIPATING PRIVATE SCHOOL; TO PROVIDE FOR A 3-YEAR PHASE-IN OF
8 THIS OPPORTUNITY SCHOLARSHIP PROGRAM; TO PROVIDE STANDARDS FOR THE
9 RECEIPT AND CALCULATION OF SUCH SCHOLARSHIPS; TO ESTABLISH AN
10 OPPORTUNITY SCHOLARSHIP FUND; TO PROVIDE FOR THE PHASED-IN
11 REDUCTION OF ADEQUATE EDUCATION FUND PAYMENTS IN RESIDENT SCHOOL
12 DISTRICTS IN THE AMOUNT OF SUCH SCHOLARSHIP PAYMENTS; TO ESTABLISH
13 AND EMPOWER AN EDUCATION OPPORTUNITY BOARD WITHIN THE STATE
14 DEPARTMENT OF EDUCATION TO ADMINISTER THE OPPORTUNITY SCHOLARSHIP
15 PROGRAM; TO PROVIDE FOR AN OPTIONAL LOCAL TUITION GRANT PROGRAM
16 FOR SUCH STUDENTS; TO PROVIDE FOR A MIDDLE-INCOME SCHOLARSHIP
17 PROGRAM; TO PRESCRIBE LIMITATIONS AND REQUIRE ANNUAL REPORTING; TO
18 ESTABLISH AN EDUCATIONAL IMPROVEMENT TAX CREDIT (EITC) PROGRAM
19 ADMINISTERED BY THE MISSISSIPPI DEVELOPMENT AUTHORITY TO PROVIDE
20 FINANCIAL ASSISTANCE TO LOW- AND MIDDLE-INCOME FAMILIES SEEKING
21 EDUCATIONAL OPTIONS FOR THEIR CHILDREN; TO AUTHORIZE THE INCOME
22 TAX CREDIT FOR BUSINESS FIRMS MAKING CONTRIBUTIONS TO QUALIFIED
23 EDUCATIONAL SCHOLARSHIP ORGANIZATIONS, PREKINDERGARTEN SCHOLARSHIP
24 ORGANIZATIONS OR EDUCATIONAL IMPROVEMENT ORGANIZATIONS AND TO
25 PROVIDE STANDARDS AND LIMITATIONS FOR SUCH CONTRIBUTIONS; TO
26 PROVIDE THAT THE AMOUNT OF SUCH CONTRIBUTIONS ARE NONTAXABLE
27 INCOME TO THE RECIPIENT; TO AMEND SECTION 27-7-17, MISSISSIPPI
28 CODE OF 1972, TO PROVIDE A STATE INCOME TAX DEDUCTION FOR PARENTS
29 WHO SEND THEIR CHILDREN OR DEPENDENTS TO A PRIVATE SCHOOL OR A
30 HOMESCHOOL PROGRAM; AND FOR RELATED PURPOSES.

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

32 **SECTION 1. Short title.** This act shall be known and may be
33 cited as the "Mississippi Opportunity Scholarship and Educational
34 Improvement Tax Credit Act of 2012."

35 **SECTION 2. Opportunity scholarships.** (1) The Legislature
36 finds that:

37 (a) Pursuant to Section 201 of the Mississippi
38 Constitution of 1890, the Legislature has the responsibility to
39 provide for the maintenance and support of a thorough and



40 efficient system of public education to serve the needs of this
41 state.

42 (b) Parents are best suited to choose the most
43 appropriate means of education for their school-age children.

44 (c) Providing diverse educational opportunities for the
45 children of this state is a civic and civil rights imperative and
46 a matter of serious concern.

47 (d) The importance of providing educational choices
48 that will meet the needs of parents and the need to maintain and
49 support an effective system of education make it imperative to
50 provide for the increased availability of diverse opportunities,
51 including both public and nonpublic programs of education, to
52 benefit all citizens of this state.

53 (e) Public schools are the foundation of the system of
54 education in this state. Further, Mississippi's longstanding
55 tradition of local control of public education allows communities
56 to adapt their public school programs to meet local needs. For
57 these reasons, a robust program of interdistrict school choice is
58 a critical means of providing families with increased educational
59 options within the traditional public school system.

60 (f) The accessibility to families of nonpublic
61 educational alternatives decreases the burden on the state and
62 local school districts and increases the range of educational
63 choices available to Mississippi families, thus providing a
64 benefit to all citizens Mississippi.

65 (g) It is the long-term goal of the Legislature to
66 offer assistance to all families in this state, in order to
67 provide every child in this state with diverse educational
68 opportunities and options.

69 (h) As an initial step toward the long-term goal of
70 offering assistance to all Mississippi families, this act provides
71 assistance to disadvantaged school-age children in this state who
72 would otherwise attend persistently lowest achieving schools.



73 (i) Many disadvantaged school-age children in this
74 state enjoy comparatively fewer educational opportunities or
75 options than school-age children who possess greater economic
76 means.

77 (j) The programs of educational choice provided in this
78 act are elements of an overall program of providing funds to
79 increase the availability of educational opportunities for
80 school-age children in this state.

81 (k) A comparatively far greater proportion of public
82 funds are and, upon implementation of an educational choice
83 program, will continue to be devoted to the benefit of children
84 enrolled in the public schools of this state. Therefore, an
85 Opportunity Scholarship Program that offers assistance to parents
86 who choose to enroll their children in participating nonpublic
87 schools should be viewed as an integral part of the state's
88 overall program of educational funding and not as an isolated
89 individual program.

90 (l) A program of financial assistance to enhance
91 educational choice in this state, as one (1) element of the
92 state's plan for the funding of diverse educational opportunities
93 for the citizens of this state, will better prepare Mississippi
94 citizens to compete for employment opportunities, will foster
95 development of a more capable and better-educated workforce and
96 will better enable the state to fulfill its obligation of
97 providing children with the opportunity to receive a quality
98 education.

99 **SECTION 3. Definitions.** The following words and phrases
100 when used in this act shall have the meanings given to them in
101 this section unless the context clearly indicates otherwise:

102 (a) "Assessment" means the Mississippi Department of
103 Education System of School Assessment Test, an equivalent local
104 assessment or another test established by the State Board of
105 Education to meet accreditation requirements and required under



106 the No Child Left Behind Act of 2001 (Public Law 107-110, 115
107 Stat. 1425) or its successor federal statute or required to
108 achieve other standards established by the department for the
109 public school or school district under Section 37-17-6, (relating
110 to single accountability system).

111 (b) "Average daily attendance" means a school
112 district's average daily attendance as defined in the Adequate
113 Education Program.

114 (c) "Board" means the Education Opportunity Board
115 established under this act.

116 (d) "Department" means the State Department of
117 Education.

118 (e) "Excess Scholarship Fund" or "fund" means the
119 Excess Scholarship Fund established in this act.

120 (f) "Federal poverty line" means the official federal
121 poverty line as defined in Section 673(2) of Subtitle B of the
122 Community Services Block Grant Act (Public Law 97-35, 95 Stat.
123 511), as adjusted from time to time.

124 (g) "Household income" means income as used for the
125 purposes of determining eligibility for a free lunch under the
126 Richard B. Russell National School Lunch Act (60 Stat. 230, 1751
127 et seq.).

128 (h) "Kindergarten" means a one-year formal kindergarten
129 program that occurs during the school year immediately prior to
130 First Grade.

131 (i) "Local scholarship" means a scholarship that is
132 both:

133 (i) Funded by the local revenues of a low-income
134 child's resident school district in an amount equal to at least
135 thirty-five percent (35%) of the school district's share of its
136 total revenue per average daily membership; and

137 (ii) Applied toward the low-income child's tuition
138 to attend a nonresident public school.



139 (j) "Low-income child" means a school-age child with a
140 household income that does not exceed one and three tenths (1.3)
141 times the federal poverty line for the school year preceding the
142 school year for which an opportunity scholarship is to be
143 distributed.

144 (k) "Middle-income child" means a school-age child with
145 a household income that does not exceed three (3) times the
146 federal poverty level for the school year immediately preceding
147 the school year for which an opportunity scholarship is to be
148 distributed.

149 (l) "Middle-income scholarship" means a middle-income
150 scholarship awarded to a middle-income child under this act to pay
151 tuition for the child to attend a nonresident public school or a
152 participating nonpublic school.

153 (m) "Middle-income scholarship recipient" means a
154 middle-income child who is awarded a middle-income scholarship
155 under this act.

156 (n) "Nonpublic school" means a school, other than a
157 public school, located within this state where a Mississippi
158 resident may legally fulfill the compulsory school attendance
159 requirements of Section 37-13-91, and that meets the applicable
160 requirements of Title VI of the Civil Rights Act of 1964 (Public
161 Law 88-352, 78 Stat. 241). The term also includes a full-time or
162 part-time kindergarten program operated by a nonpublic school.

163 (o) "Nonresident public school" means a public school
164 outside a child's resident school district.

165 (p) "Nonresident school district" means a school
166 district other than the school district in which a school-age
167 child resides.

168 (q) "Nonresident student" means a school-age child
169 attending a public school outside the child's resident school
170 district.



171 (r) "Opportunity scholarship" means an opportunity
172 scholarship awarded to a low-income child under this act to pay
173 tuition for the child to attend a nonresident public school or a
174 participating nonpublic school.

175 (s) "Opportunity Scholarship Program" or "program"
176 means the Opportunity Scholarship Program established under this
177 act.

178 (t) "Opportunity scholarship recipient" means a
179 low-income child who is awarded an opportunity scholarship under
180 this act.

181 (u) "Parent" means a Mississippi resident who is a
182 parent or guardian of a compulsory-school-age child.

183 (v) "Participating nonpublic school" means a nonpublic
184 school located in this state and offering a program of instruction
185 for Kindergarten through 12th Grade, or a combination of grades,
186 that certifies to the board under Section 6 of this act that it
187 meets the following criteria:

188 (i) The nonpublic school is a nonprofit entity
189 that is exempt from federal taxation under Section 501(c)(3) of
190 the Internal Revenue Code of 1986 (Public Law 99-514, 26 USC
191 Section 1 et seq.);

192 (ii) The nonpublic school does not discriminate in
193 its admission policies or practices for opportunity scholarship
194 applicants on the basis of measures of achievement or aptitude or
195 status as a handicapped person; provided, however, that an
196 applicant may be required to meet established eligibility criteria
197 for participation in magnet schools or in schools with specialized
198 academic missions; and

199 (iii) The nonpublic school is in full compliance
200 with all federal and state laws applicable to nonpublic schools on
201 the date prior to the effective date of this act.

202 (w) "Persistently lowest achieving school" means a
203 public elementary or secondary school within this state that is



204 among the lowest performing five percent (5%) of schools. To
205 determine the lowest performing five percent (5%) of schools, the
206 State Department of Education shall:

207 (i) Consider all public schools in this state,
208 with the exception of charter schools, area vocational-technical
209 schools, schools that do not draw their student body from a
210 particular attendance boundary, and schools with specialized
211 academic programs with specific admissions criteria;

212 (ii) Exclude schools that have made adequate
213 yearly progress or were determined to be making progress for at
214 least one (1) of the two (2) most recent school years or that have
215 not been measured for adequate yearly progress in one (1) of the
216 two (2) most recent school years;

217 (iii) Rank all remaining schools based upon their
218 performance on the most recent assessment for which data is posted
219 on the department's publicly accessible internet website; and

220 (iv) Include the lowest performing ten (10)
221 schools ranked under subparagraph (iii) of this paragraph on a
222 list of persistently lowest achieving schools.

223 (x) "Resident school district" means the school
224 district in which a school-age child resides.

225 (y) "School-age child" means a compulsory-school-age
226 child enrolling in Grades 1 through 12 pursuant to Section
227 37-13-91.

228 (z) "Student with a disability" means a school-age
229 child who has been identified, in accordance with special
230 education services and programs, as a "child with a disability,"
231 as defined in 34 CFR Section 300.8 (relating to a child with a
232 disability).

233 (aa) "Total revenue per average daily attendance" means
234 a school district's total revenue per average daily attendance
235 minus the amount of reimbursement to the school district from the
236 Adequate Education Program for pupil transportation.



237 **SECTION 4. Opportunity Scholarship Program.** (1)

238 **Establishment.** Beginning with the 2012-2013 school year, the
239 Opportunity Scholarship Program shall be established to provide
240 scholarships to help low-income children pay tuition to attend a
241 nonresident public school or a participating nonpublic school.

242 (2) **Phase-in.** The Opportunity Scholarship Program shall be
243 phased in as follows:

244 (a) During the 2012-2013 school year, the Opportunity
245 Scholarship Program shall be available to low-income children who
246 satisfy both of the following:

247 (i) Either attended a persistently lowest
248 achieving school during the 2011-2012 school year or will be a
249 Kindergarten student during the 2012-2013 school year; and

250 (ii) Will reside within the attendance boundary of
251 a persistently lowest achieving school as of the first day of
252 classes of the 2012-2013 school year; or

253 (iii) Student has a documented diagnosis of
254 dyslexia and requires specialized dyslexia therapy intervention
255 services that are available in a nonpublic special purpose school.

256 (b) During the 2013-2014 school year, the Opportunity
257 Scholarship Program shall be available to low-income children who
258 qualified for the program for the 2012-2013 school year under
259 paragraph (a) of this subsection and to low-income children who
260 will reside within the attendance boundary of a persistently
261 lowest achieving school as of the first day of classes of the
262 2013-2014 school year.

263 (c) (i) During the 2014-2015 school year and each
264 school year thereafter, the Opportunity Scholarship Program shall
265 be available to all low-income children residing in this state,
266 provided that the aggregate amount of all opportunity scholarships
267 awarded for the 2014-2015 school year and for each school year
268 thereafter to low-income children who do not reside within the
269 attendance boundary of a persistently lowest achieving school as



270 of the first day of classes of the school year shall not exceed
271 Twenty-five Million Dollars (\$25,000,000.00).

272 (ii) Nothing in this paragraph shall be construed
273 to limit the amount of opportunity scholarships awarded to
274 low-income children who were eligible for opportunity scholarships
275 in the 2012-2013 and 2013-2014 school years or who reside within
276 the attendance boundary of a persistently lowest achieving school
277 as of the first day of classes of a school year.

278 (3) **List of persistently lowest achieving schools to be**
279 **published.** By July 1, 2012, and by February 1 of each year
280 thereafter, the department shall publish on the department's
281 publicly accessible Internet website a list of persistently lowest
282 achieving schools that will be in effect for purposes of this act
283 for the following school year. The department shall publish the
284 list based upon the most recent school year for which data is
285 available.

286 (4) **Notice.** (a) For each school year, by a date
287 established by the board, each school district in this state shall
288 post on its publicly accessible Internet website notice of the
289 following:

290 (i) A description of the Opportunity Scholarship
291 Program.

292 (ii) Instructions for applying for an opportunity
293 scholarship.

294 (iii) Instructions for applying for a local
295 scholarship where the school district has elected to provide a
296 local scholarship under Section 5 of this act.

297 (iv) A statement as to whether any schools in the
298 school district have been designated by the department as
299 persistently lowest achieving schools.

300 (v) Notice that a parent must contact directly the
301 nonresident public school or participating nonpublic school in



302 which the parent's child seeks to enroll for application
303 instructions.

304 (b) The notice shall be in a form provided by the
305 board.

306 **SECTION 5. Opportunity scholarship to attend a nonresident**

307 **public school.** (1) **Eligibility.** A low-income child who is
308 eligible to participate in the Opportunity Scholarship Program may
309 receive an opportunity scholarship to pay tuition to attend a
310 nonresident public school that accepts a child's enrollment
311 application under subsection (4) of this section.

312 (2) **Local scholarship.** A school district may elect to
313 provide a local scholarship to low-income children residing within
314 the school district to pay tuition to attend a nonresident public
315 school that accepts a child's enrollment application under
316 subsection (4) of this section. A school district that elects to
317 provide a local scholarship shall:

318 (a) By a date established by the board, notify all
319 residents of the school district of the availability and amount of
320 the local scholarship for the following school year and the
321 process by which a low-income child may apply to the board to
322 receive the opportunity and local scholarships. The school
323 district shall post the notice on the school district's publicly
324 accessible Internet website. The notice may be incorporated into
325 the notice the school district is required to provide under
326 Section 4 of this act.

327 (b) By a date established by the board, notify the
328 board of the availability and amount of the local scholarship for
329 the following school year.

330 (c) When directed to do so by the board, pay to the
331 board the local scholarship for each low-income child residing in
332 the district who the board determines to be eligible for the local
333 scholarship and who the board confirms has enrolled in a
334 nonresident public school.



335 (d) Comply with all guidelines developed by the board
336 under Section 10 of this act.

337 (3) **Application for opportunity and local scholarships.** (a)
338 By a date established by the board and pursuant to guidelines
339 developed by the board under Section 10 of this act, the parent of
340 a low-income child may apply to the board:

341 (i) For an opportunity scholarship for the
342 following school year.

343 (ii) For a local scholarship for the following
344 school year, where the low-income child's resident school district
345 has elected to provide a local scholarship under subsection (2) of
346 this section.

347 (b) By a date established by the board, the board shall
348 notify parents whether the scholarships for which the student
349 applied will be awarded for the following school year.

350 (4) **Application for enrollment in a nonresident public**
351 **school.** (a) By a date established by the board, the parent of a
352 low-income child who has been awarded a scholarship under
353 subsection (3) of this section may apply to one or more
354 nonresident public schools for enrollment of the child for the
355 following school year. The application shall be on a form
356 provided by the nonresident school district.

357 (b) (i) By a date established by the board, the
358 nonresident school district shall provide written notice to the
359 parent and the board as to whether the child will be offered
360 enrollment in the requested nonresident public school for the
361 following school year.

362 (ii) By a date established by the board, the
363 parent must provide written notice to the board, the resident
364 school district and the nonresident school district whether the
365 offer of enrollment will be accepted.

366 (iii) By a date established by the board, the
367 board shall provide the resident school district and the



368 nonresident school district with written confirmation of the
369 opportunity scholarship recipient's enrollment in the nonresident
370 school district.

371 (iv) If the child is not enrolled in a nonresident
372 public school, the child's resident school district shall
373 determine the public school within the resident school district to
374 which the child will be assigned.

375 (c) Each school district shall develop guidelines
376 setting forth the terms and conditions under which it will enroll
377 nonresident students receiving opportunity and local scholarships
378 and shall develop an enrollment application form and process. If
379 a school district determines to enroll nonresident students
380 receiving opportunity and local scholarships, the school district
381 must enroll such nonresident students on a random basis from a
382 pool of applicants who meet the application deadline established
383 by the board, provided that:

384 (i) The nonresident student's enrollment in the
385 nonresident school district would not place either the nonresident
386 school district or the resident school district in violation of a
387 valid and binding desegregation order;

388 (ii) The nonresident student has not been expelled
389 nor is the nonresident student in the process of being expelled
390 under applicable regulations of the State Board of Education;

391 (iii) The nonresident student has not been
392 recruited by the school district or its representatives for
393 athletic purposes; or

394 (iv) The nonresident student meets the established
395 eligibility criteria for participation in a magnet school or in a
396 public school with a specialized academic mission.

397 (d) A nonresident school district may give priority in
398 enrollment to a nonresident student who has been awarded a local
399 scholarship.



400 (5) **State payments.** The state shall make payment pursuant
401 to the schedule contained in Section 7 of this act to each school
402 district or area vocational-technical school that accepts a
403 nonresident student under the provisions of this act subject to
404 the following terms and conditions:

405 (a) The state shall pay to each school district or area
406 vocational-technical school that accepts a nonresident student, on
407 a tuition basis, the amount determined under Section 7 of this
408 act.

409 (b) (i) For a nonresident student who is an
410 opportunity scholarship recipient and defined as a "student with a
411 disability," services provided to the opportunity scholarship
412 recipient shall be charged against the state's special education
413 payments to the resident school district, provided that the
414 resident school district shall not be charged more for services
415 provided to the opportunity scholarship recipient by the
416 nonresident school district than the difference between the
417 current year cost of the services had the opportunity scholarship
418 recipient remained in the resident school district and the sum of
419 the opportunity scholarship, the local scholarship and the
420 per-pupil special education funding following the opportunity
421 scholarship recipient.

422 (ii) The resident school district shall provide
423 the board with documentation of the prior year's cost of services
424 provided to the opportunity scholarship recipient and an estimate
425 of the cost of providing those services in the current year had
426 the opportunity scholarship recipient remained in the resident
427 school district. Any cost not covered by this funding shall be
428 paid by the nonresident school district enrolling the opportunity
429 scholarship recipient.

430 (c) An opportunity scholarship recipient shall be
431 included in the average daily attendance of the opportunity
432 scholarship recipient's resident school district.



433 (d) In the event an opportunity scholarship recipient
434 withdraws from a nonresident school district prior to the
435 completion of the school year, the following shall apply:

436 (i) The nonresident school district shall, within
437 fifteen (15) days of the opportunity scholarship recipient's
438 withdrawal from the nonresident school district, provide the board
439 with written notice of the opportunity scholarship recipient's
440 withdrawal from the nonresident school district.

441 (ii) The resident school district, nonresident
442 school district or participating nonpublic school in which the
443 opportunity scholarship recipient subsequently enrolls shall
444 notify the board within five (5) days of the opportunity
445 scholarship recipient's enrollment.

446 (iii) Within thirty (30) days after receiving the
447 notice required under subparagraph (ii) of this paragraph, the
448 board shall do the following:

449 1. If the opportunity scholarship recipient
450 enrolls in the resident school district or a nonresident school
451 district, pay the resident school district or nonresident school
452 district the full amount of the opportunity scholarship payment
453 reduced on a pro rata basis for the portion of the school year in
454 which the opportunity scholarship recipient was enrolled in
455 another school.

456 2. If the opportunity scholarship recipient
457 enrolls in a participating nonpublic school, pay the opportunity
458 scholarship recipient's parent the full amount of the opportunity
459 scholarship payment reduced on a pro rata basis for the portion of
460 the school year in which the opportunity scholarship recipient was
461 enrolled in another school. Such payment shall be made to the
462 parents of the opportunity scholarship recipient pursuant to the
463 provisions of Section 6(2)(c)(i)1 of this act.

464 (6) **Limitation.** The tuition charged by a nonresident school
465 district to an opportunity scholarship recipient under this



466 section shall not exceed the sum of the opportunity scholarship
467 and the local scholarship, if applicable, awarded to the
468 opportunity scholarship recipient.

469 (7) **Transportation.** (a) Notwithstanding any provisions of
470 Section 37-41-1 to the contrary, a school district that provides
471 its resident public school pupils with transportation to and from
472 the resident public schools or to and from any points within or
473 without this state in order to provide field trips shall provide a
474 student who resides within the school district but regularly
475 attends a nonresident public school, including a charter school,
476 that is located not more than ten (10) miles from the student's
477 resident school district by the nearest public highway, with
478 transportation to and from such nonresident public school or to
479 and from any points within or without this state in order to
480 provide field trips.

481 (b) Transportation of a student under this subsection
482 shall be subject to reimbursement.

483 **SECTION 6. Opportunity scholarship to attend a participating**
484 **nonpublic school.** (1) **Eligibility.** The parent of a low-income
485 child who is eligible to receive an opportunity scholarship under
486 Section 4 of this act and desires to apply for an opportunity
487 scholarship to attend a participating nonpublic school must:

488 (a) By a date established by the board, apply to the
489 board for an opportunity scholarship for the following school year
490 pursuant to guidelines developed by the board under Section 10 of
491 this act. By a date established by the board, the board shall
492 notify parents whether the opportunity scholarship will be awarded
493 for the following school year.

494 (b) Apply for enrollment directly to the participating
495 nonpublic school pursuant to application procedures developed by
496 the participating nonpublic school. By a date established by the
497 board, a participating nonpublic school shall provide written
498 confirmation to the board of each opportunity scholarship



499 recipient whose application for enrollment has been accepted for
500 the following school year. By a date established by the board,
501 the board shall provide the opportunity scholarship recipient's
502 resident school district with written confirmation of the
503 opportunity scholarship recipient's enrollment in the
504 participating nonpublic school.

505 (2) **Payment of opportunity scholarship awards.** The state
506 shall provide payment of an opportunity scholarship to the parents
507 of each opportunity scholarship recipient who is enrolled in a
508 participating nonpublic school under the provisions of this
509 section subject to the following terms and conditions:

510 (a) Opportunity scholarships shall be awarded only for
511 the payment of costs of tuition at a participating nonpublic
512 school within this state. Opportunity scholarships shall not be
513 awarded for enrollment in a home education program defined under
514 Section 37-13-91.

515 (b) Opportunity scholarships shall be paid to the
516 parents of an opportunity scholarship recipient upon the board's
517 receipt of written confirmation of enrollment from the
518 participating nonpublic school selected by the recipient. The
519 opportunity scholarship award shall be paid by check which may be
520 endorsed by the parents only for payment of tuition at the
521 participating nonpublic school at which the opportunity
522 scholarship recipient's enrollment has been confirmed.

523 (c) In the event an opportunity scholarship recipient
524 withdraws from a participating nonpublic school prior to the
525 completion of the school year, the following shall apply:

526 (i) The participating nonpublic school shall,
527 within fifteen (15) days of the opportunity scholarship
528 recipient's withdrawal from the participating nonpublic school:

529 1. Provide the board with written notice of
530 the opportunity scholarship recipient's withdrawal from the
531 participating nonpublic school; and



532 2. Return to the board the full amount of the
533 opportunity scholarship payment reduced on a pro rata basis by the
534 tuition for the portion of the school year in which the
535 opportunity scholarship recipient was enrolled.

536 (ii) If the participating nonpublic school fails
537 to submit to the board the amount required to be paid under
538 subparagraph (i) of this paragraph, the board shall impose
539 interest on the unpaid amount, calculated from the due date at the
540 rate determined by the Commissioner of Revenue for interest
541 payments on overdue taxes or the refund of taxes.

542 (iii) If the opportunity scholarship recipient
543 enrolls in another participating nonpublic school within the
544 school year for which the opportunity scholarship was awarded, the
545 board shall pay the parent of the opportunity scholarship
546 recipient the opportunity scholarship award prorated for the
547 remaining portion of the school year.

548 (d) In the event an opportunity scholarship recipient
549 is expelled from a participating nonpublic school prior to the
550 completion of the school year and the opportunity scholarship
551 recipient subsequently enrolls in his resident school district,
552 the board shall pay the resident school district the opportunity
553 scholarship award prorated for the remaining portion of the school
554 year. The resident school district shall apply this amount toward
555 providing educational services for the opportunity scholarship
556 recipient, which may include, but shall not be limited to, an
557 alternative assignment or alternative education services.

558 (e) **Penalties.** (i) Each opportunity scholarship check
559 issued under this section shall contain the following statement:

560 "FAILURE TO ENDORSE THIS CHECK AS DIRECTED BY THE BOARD
561 MAY SUBJECT THE ENDORSER TO CIVIL PENALTIES AND CRIMINAL
562 PROSECUTION."

563 (ii) A parent's endorsement or use of an
564 opportunity scholarship check in a manner other than as directed



565 by the department may subject the parent to the following
566 penalties:

567 1. A civil penalty equal to three hundred
568 percent (300%) of the full amount of the annual opportunity
569 scholarship award made to the parent.

570 2. Disqualification from future eligibility
571 for an opportunity scholarship.

572 3. Criminal prosecution.

573 (3) **Enrollment requirements.** The following shall apply to a
574 participating nonpublic school which admits an opportunity
575 scholarship recipient:

576 (a) The participating nonpublic school shall not
577 discriminate on any basis that is illegal under federal or state
578 laws applicable to nonpublic schools on the date prior to the
579 effective date of this act.

580 (b) The participating nonpublic school shall prohibit
581 discrimination in enrollment on the basis of race or color.

582 (c) The participating nonpublic school may not recruit
583 any public school student to enroll for athletic purposes.

584 (d) For each school year, by a date established by the
585 board, a nonpublic school that desires to enroll opportunity
586 scholarship recipients under this act shall certify to the board
587 that it satisfies the definition of "participating nonpublic
588 school" in Section 3 of this act. Such certification shall be on
589 a form developed by the board.

590 (4) **Policies.** Upon request, a participating nonpublic
591 school shall make available for review by the parents of any
592 opportunity scholarship recipient seeking enrollment, its written
593 school policies and procedures related to tuition charges,
594 admissions, academic offerings and requirements, discipline,
595 religious instruction, parent involvement, standardized testing,
596 the release of results of standardized tests administered by the
597 participating nonpublic school, and extracurricular activities,



598 and suspension and expulsion of students, including educational
599 accommodations and counseling offered to students and parents.

600 (5) **Assessments.** (a) (i) Each participating nonpublic
601 school shall administer annually an assessment or a nationally
602 normed standardized achievement test in reading/language arts and
603 mathematics to each opportunity scholarship recipient attending
604 the participating nonpublic school in Grades 3, 5, 8 and 11.

605 (ii) To comply with this paragraph, a
606 participating nonpublic school may either administer an assessment
607 or administer a nationally normed standardized achievement test
608 chosen by the participating nonpublic school from a list
609 established under paragraph (b) of this subsection.

610 (b) The board shall establish a list of at least eight
611 (8) nationally normed standardized achievement tests from which
612 the participating nonpublic school shall select a test to be
613 administered if the participating nonpublic school does not choose
614 to administer an assessment.

615 (c) Each participating nonpublic school shall:

616 (i) release each opportunity scholarship
617 recipient's individual results on the assessment or nationally
618 normed standardized achievement test administered to opportunity
619 scholarship recipients under paragraph (a) of this subsection to
620 the parent of the opportunity scholarship recipient.

621 (ii) If the participating nonpublic school has a
622 publicly accessible Internet website, post on the website the
623 participating nonpublic school's aggregate results on the
624 assessment or nationally normed standardized achievement test
625 administered to opportunity scholarship recipients under paragraph
626 (a) of this subsection, provided that the participating nonpublic
627 school shall not post results that reveal the identity of any
628 individual student.

629 (d) The participating nonpublic school shall bear the
630 cost of the testing administered under this subsection and shall



631 not impose an assessment or testing fee on an opportunity
632 scholarship recipient.

633 (6) **Construction.** Nothing in this section shall be
634 construed to:

635 (a) Prohibit a participating nonpublic school from
636 limiting admission to a particular grade level, a single gender or
637 to areas of concentration of the participating nonpublic school,
638 including, but not limited to, mathematics, science and the arts.

639 (b) Empower the state or any of its agencies or
640 officers or political subdivisions to impose any additional
641 requirements on any participating nonpublic school which are not
642 otherwise authorized under the laws of this state or to require
643 any participating nonpublic school to enroll any opportunity
644 scholarship recipient if the participating nonpublic school does
645 not offer appropriate programs or is not structured or equipped
646 with the necessary facilities to meet the special needs of the
647 opportunity scholarship recipient or does not offer a particular
648 program requested.

649 **SECTION 7. Amount of opportunity scholarship.** (1)

650 **Calculation.** (a) The amount of the opportunity scholarship shall
651 equal one hundred percent (100%) of the state's share of the
652 resident school district's total revenue per average daily
653 attendance of the prior school year.

654 (b) In no case shall the combined amount of the
655 opportunity scholarship award and any additional financial
656 assistance provided by a participating nonpublic school exceed the
657 tuition rate for the participating nonpublic school.

658 (2) **Limitation.** No nonresident public school or
659 participating nonpublic school may charge an opportunity
660 scholarship recipient a higher tuition rate than the rate the
661 nonresident public school or participating nonpublic school would
662 have charged to a student who had not received an opportunity
663 scholarship.



664 (3) **Excess Scholarship Fund.** (a) The Excess Scholarship
665 Fund is established in the State Treasury and shall be funded by
666 the amount of the opportunity scholarship awarded to an
667 opportunity scholarship recipient under this section in excess of
668 the amount of tuition charged to the opportunity scholarship
669 recipient.

670 (b) The fund shall be administered by the board and
671 applied as follows:

672 (i) During the 2013-2014 school year and each
673 school year thereafter, money in the fund shall be applied toward
674 the costs of the Opportunity Scholarship Program, subject to
675 subparagraph (ii) of this paragraph.

676 (ii) During the 2015-2016 school year and each
677 school year thereafter, one-half (1/2) of the money in the fund
678 shall be applied toward costs of the following programs:

679 1. One-half (1/2) of the money under this
680 subparagraph shall be applied to the public school demonstration
681 grant program. Any unused grant funding shall be added to the
682 total amount of funds available for the middle-income scholarship
683 program.

684 2. One-half (1/2) of the money under this
685 subparagraph shall be applied toward the costs of the
686 middle-income scholarship program.

687 (4) **Annual appropriations.** (a) Opportunity scholarships
688 authorized under this section shall be made from annual
689 appropriations made by the Legislature to the department and
690 monies available in the fund for that purpose.

691 (b) In the event that insufficient monies are available
692 in any fiscal year to provide opportunity scholarships to all
693 eligible opportunity scholarship recipients in the amount
694 authorized, the board shall make pro rata reductions in the amount
695 of the opportunity scholarship provided to each opportunity
696 scholarship recipient.



697 (c) The total amount of opportunity scholarships
698 provided in any fiscal year shall be limited to the amount of
699 money appropriated for that fiscal year and monies in the fund.

700 (5) **Nontaxable.** Opportunity scholarship funds received by a
701 parent pursuant to this section shall not be considered taxable
702 income for purposes of Mississippi income tax provisions, nor
703 shall such opportunity scholarships constitute financial
704 assistance or appropriations to the participating nonpublic school
705 attended by the opportunity scholarship recipient.

706 (6) **Continued eligibility.** (a) Subject to subsection (4)
707 of this section, a child enrolled in a nonresident public school
708 or a participating nonpublic school who received an opportunity
709 scholarship under this section in the prior school year shall
710 receive an opportunity scholarship in each school year of
711 enrollment under the Opportunity Scholarship Program, provided
712 that the child remains eligible.

713 (b) (i) If a child who received an opportunity
714 scholarship under this section in the prior school year ceases to
715 qualify as a low-income child, the child shall continue to receive
716 a partial scholarship until completing the eighth grade, provided
717 that the child continues to meet all other eligibility
718 requirements.

719 (ii) In calculating the amount of the partial
720 scholarship, the board shall make a pro rata reduction in the
721 child's opportunity scholarship award based upon the child's
722 household income.

723 (7) **Penalties.** Any person who fraudulently submits an
724 opportunity or local scholarship application or who knowingly
725 falsifies material information on an opportunity or local
726 scholarship application shall be subject to the following
727 penalties:

728 (a) Imposition by the board of a civil penalty of up to
729 One Thousand Dollars (\$1,000.00); and



730 (b) Disqualification from future participation in the
731 Opportunity Scholarship Program.

732 (8) **Residence in more than one (1) school district within a**
733 **school year.** Where an opportunity scholarship recipient resides
734 within more than one (1) school district during a school year, the
735 amount of the opportunity scholarship shall be charged against
736 each resident school district on a pro rata basis.

737 **SECTION 8. Guidelines.** (1) **Requirements.** Within thirty
738 (30) days of the effective date of this act, the board shall
739 establish guidelines that provide the following:

740 (a) Forms to apply for opportunity and local
741 scholarships, including application and approval processes and
742 deadlines for application and notification.

743 (b) Procedures to verify the accuracy of the
744 information provided in an opportunity or local scholarship
745 application.

746 (c) Procedures for school district, school and parent
747 notification of opportunity or local scholarship awards.

748 (d) Procedures for administration of the opportunity
749 and local scholarship programs.

750 (e) Confirmation of school enrollment by opportunity
751 scholarship recipients.

752 (f) Procedures for making payment of opportunity
753 scholarship awards, including policies and procedures to minimize
754 the likelihood of fraud or misuse of opportunity scholarship
755 funds. For an opportunity scholarship recipient enrolled in a
756 participating nonpublic school, the procedures shall include
757 restrictive endorsement of opportunity scholarship award checks to
758 the participating nonpublic school in which the opportunity
759 scholarship recipient is enrolled.

760 (g) Procedures for participating nonpublic schools to
761 pay pro rata refunds of opportunity scholarships to the board when
762 an opportunity scholarship recipient withdraws from a



763 participating nonpublic school during the school year for which
764 the opportunity scholarship was paid.

765 (h) Development and distribution of public information
766 concerning the opportunity and local scholarship and interdistrict
767 enrollment programs.

768 (i) Procedures to determine the eligibility of homeless
769 students for opportunity scholarships under this section.

770 (j) Deadline dates for actions required to be taken by
771 the board, the department, school districts, participating
772 nonpublic schools and parents under this section.

773 (k) Such other procedures as are necessary to fully
774 implement the opportunity and local scholarship and interdistrict
775 enrollment programs.

776 (l) A list of at least eight (8) nationally normed
777 standardized achievement tests from which a participating
778 nonpublic school may select a test to be administered pursuant to
779 Section 6 of this act. The initial list developed by the board
780 shall, at a minimum, include the following: California
781 Achievement Test, Comprehensive Testing Program (CTPIV), Iowa Test
782 of Basic Skills, Metropolitan Achievement Test, Peabody
783 Achievement Individual Test Revised Version, Stanford Achievement
784 Test, Terra Nova and Woodcock Johnson Revised Tests of Achievement
785 III.

786 (2) **Publication.** The guidelines shall be published as a
787 statement of policy. The board shall post the guidelines on the
788 department's publicly accessible Internet website.

789 (3) **State Board of Education.** Notwithstanding any other
790 provision of law to the contrary, the programs, procedures and
791 guidelines authorized by this section shall not be subject to
792 review, regulation or approval by the State Board of Education.

793 **SECTION 9. Reduction in amount of school aid.**

794 Notwithstanding any other provision of law to the contrary,
795 beginning in the second consecutive school year of enrollment in a



796 nonresident public school or a participating nonpublic school by
797 an opportunity scholarship recipient who was enrolled in the
798 recipient's resident school district or in a charter school when
799 the recipient first received an opportunity scholarship under this
800 act, the amount of Mississippi Adequate Education Program funding
801 paid by the department to the resident school district shall be
802 reduced by an amount equal to the state's share of the school
803 district's total revenue per average daily attendance.

804 **SECTION 10. Education Opportunity Board.** (1)

805 **Establishment.** An independent board to be known as the Education
806 Opportunity Board is established to be administratively located
807 within the department. The board shall consist of three (3)
808 members appointed by the Governor with the advice and consent of
809 the Senate.

810 (2) **Terms of members.** Members of the board shall serve a
811 term of four (4) years. Vacancies shall be filled for an
812 unexpired term in the same manner as original appointments.
813 Members shall continue to serve after the expiration of their term
814 until the Governor appoints a replacement who is confirmed by the
815 Senate. All members of the board must be residents of this state.

816 (3) **Chairperson.** The Governor shall annually select a
817 chairperson from among the membership of the board.

818 (4) **Meetings.** Meetings shall be held at the call of the
819 chairperson or upon request in writing of a majority of the board.
820 A majority shall constitute a quorum and a majority of such quorum
821 shall have the authority to act upon any matter properly before
822 the board unless otherwise specified in this act.

823 (5) **Compensation prohibited.** Members of the board shall
824 receive no compensation for their services but shall be reimbursed
825 for their actual and necessary expenses incurred in the
826 performance of their official board duties.

827 (6) **Executive director and staff.** (a) There shall be an
828 executive director of the board who shall serve as the executive



829 officer and secretary of the board. The board shall employ and
830 fix the reasonable compensation of the executive director.

831 (b) The executive director, with approval of the board,
832 may employ additional professional and clerical personnel as may
833 be necessary to carry out the duties and responsibilities of the
834 board.

835 (c) The department shall provide adequate funding,
836 space and equipment to facilitate the activities of the board.

837 (7) **Legal advice and assistance.** The Attorney General shall
838 provide such legal advice and assistance as the board may require.

839 (8) **Powers and duties.** The board shall have the following
840 powers and duties:

841 (a) Establish guidelines for the administration of the
842 opportunity and local scholarship programs as required under this
843 act.

844 (b) Administer the opportunity and local scholarship
845 application and approval processes.

846 (c) Develop the opportunity and local scholarship
847 application form and any other forms necessary to administer the
848 opportunity and local scholarship programs, including the notice
849 required to be provided by school districts under Section 4 of
850 this act.

851 (d) Review and verify the income and residence of
852 opportunity and local scholarship applicants.

853 (e) Announce the award of opportunity and local
854 scholarships for the following school year under Sections 5 and 6
855 of this act.

856 (f) Confirm the enrollment of opportunity scholarship
857 recipients in nonresident public schools and participating
858 nonpublic schools and allocate opportunity scholarship funds to
859 opportunity scholarship recipients.

860 (g) Make payment of opportunity scholarship awards as
861 provided in Sections 5 and 6 of this act.



862 (h) Notify school districts that elect to create a
863 local scholarship when payment must be made.

864 (i) Beginning after the first school year of
865 implementation of the Opportunity Scholarship Program, prepare a
866 report to be submitted to the Governor and the Legislature by
867 December 1 of each year, made available to the parents of
868 opportunity scholarship recipients and placed on the department's
869 publicly accessible Internet website that includes at least the
870 following information for the prior school year:

871 (i) The total number of opportunity scholarships
872 requested.

873 (ii) The total number and total dollar amount of
874 opportunity scholarships awarded, in total and disaggregated by:

875 1. Whether the opportunity scholarship
876 recipient attends a nonresident public school or a participating
877 nonpublic school.

878 2. Grade level of the opportunity scholarship
879 recipient.

880 3. Whether the opportunity scholarship
881 recipient resides in a school district with at least one (1)
882 persistently lowest achieving school.

883 (iii) The administrative costs of the Opportunity
884 Scholarship Program.

885 (iv) A listing of nonresident public schools to
886 which opportunity scholarship funds were disbursed on behalf of
887 opportunity scholarship recipients and the amount disbursed to
888 each nonresident public school.

889 (v) A listing of participating nonpublic schools
890 in which opportunity scholarship recipients enrolled and the
891 number of opportunity scholarship recipients who enrolled in each
892 participating nonpublic school.



893 (vi) The total number and total dollar amount of
894 local scholarships awarded, disaggregated by the resident school
895 districts that made the local scholarship awards.

896 (j) For the 2015-2016 school year and each school year
897 thereafter, administer and announce the award of public school
898 choice demonstration grants to eligible school districts as
899 provided under Section 12 of this act, and annually redistribute
900 any remaining funds from the public school choice demonstration
901 grants program to the middle-income scholarship program.

902 (k) For the 2015-2016 school year and each school year
903 thereafter, administer the middle-income scholarship program.

904 (l) **Study.** Following the 2015-2016 school year, the
905 board shall conduct a study of the effectiveness of the
906 Opportunity Scholarship Program and shall deliver a written report
907 of its findings, including any recommendations for changes to the
908 program, to the Governor, the Chairman of the Education Committee
909 of the Senate and the Chairman of the Education Committee of the
910 House of Representatives by December 31, 2016.

911 **SECTION 11. Optional local tuition grant program.** A school
912 district may, out of funds received from the state for educational
913 purposes, establish a program of tuition grants to provide for the
914 education of resident students who wish to attend a nonresident
915 public school or a participating nonpublic school on a tuition
916 basis. A student who receives a tuition grant under this section
917 shall be included in the average daily attendance of the student's
918 resident school district for the purpose of providing adequate
919 education funding and special education funding.

920 **SECTION 12. Public school choice demonstration grant**
921 **program.** (1) **Establishment.** A school district may, out of funds
922 received by the board under Section 7 of this act and available
923 state and local funds, establish a program of tuition grants to
924 provide for the education of resident students who wish to attend
925 a nonresident public school.



926 (2) **Limit.** No grant award issued by the board to a school
927 district under this section shall exceed Five Hundred Thousand
928 Dollars (\$500,000.00).

929 (3) **Procedure.** Grant applications shall only be received,
930 reviewed and allocated by the board during an annual two-week
931 grant review process to begin on July 1 and end on July 15 of each
932 calendar year.

933 (4) **Eligibility.** To be eligible for grants under this
934 program, the school district shall:

935 (a) Submit an application to the board at a date to be
936 determined by the board requesting a public school choice
937 demonstration grant.

938 (b) Submit a statement of the amount of the grant
939 sought, including the estimated number of tuition grants to be
940 distributed.

941 (c) Demonstrate a commitment of funds received from
942 both local sources and the state for educational purposes of at
943 least Three Dollars (\$3.00) for every One Dollar (\$1.00) of grant
944 funds issued under Section 7 of this act.

945 (d) Meet any other requirements as set by the board.

946 (5) **Average daily attendance.** A student who receives a
947 tuition grant under this section shall be included in the average
948 daily attendance of the student's resident school district for the
949 purpose of providing adequate education funding and special
950 education funding.

951 **SECTION 13. Middle-income scholarship program.** (1)

952 **Establishment.** Beginning with the 2014-2015 school year, the
953 board shall establish a middle-income scholarship program to
954 provide scholarships to help middle-income children in this state
955 pay tuition to attend a nonresident public school or participating
956 nonpublic school. The board shall make annual middle-income
957 scholarship awards on a pro rata basis from the funding provided
958 under Section 7 of this act.



959 (2) **Notice.** (a) By a date determined by the board, each
960 school district in this state shall provide all residents of the
961 school district with notice of the following:

962 (i) A description of the middle-income scholarship
963 program.

964 (ii) Instructions for applying for a middle-income
965 scholarship.

966 (iii) Notice that a parent must contact directly
967 the nonresident public school or participating nonpublic school in
968 which the parent's child seeks to enroll for application
969 instructions.

970 (b) The school district shall provide the notice to all
971 residents of the school district by notice posted on the school
972 district's publicly accessible Internet website. The notice shall
973 be in a form provided by the board.

974 (3) **Regulations.** In promulgating regulations for the
975 administration of the middle-income scholarship, the board shall
976 develop application and enrollment processes and procedures
977 substantively similar to Sections 5 and 6 of this act.

978 (4) **Limitation.** (a) No nonresident public school or
979 participating nonpublic school may charge a middle-income
980 scholarship recipient a higher tuition rate than the rate the
981 nonresident public school or participating nonpublic school would
982 have charged to a student who had not received a middle-income
983 scholarship.

984 (b) The combined amount of the middle-income
985 scholarship award and any additional financial assistance provided
986 by the participating nonpublic school shall not exceed the tuition
987 rate for the participating nonpublic school.

988 (5) **Applicability.** The provisions of Sections 5 and 6 of
989 this act shall apply to the middle-income scholarship program
990 established under this section.



991 **SECTION 14. Educational Improvement Tax Credit (EITC).** (1)

992 **Definitions.** The following words and phrases when used in this
993 section shall have the meanings given to them in this section
994 unless the context clearly indicates otherwise:

995 (a) "Business firm" means an entity authorized to do
996 business in this state and subject to taxes imposed under the
997 Mississippi Income Tax Law, Section 27-7-1 et seq., The term
998 includes a pass-through entity. For purposes of this section, a
999 business firm shall be included in one (1) of the following
1000 groups:

1001 (i) Group 1 includes any business firm that is
1002 either entering the second year of a two-year commitment or
1003 applying for tax credits for a contribution to an educational
1004 improvement organization that is also a school district
1005 foundation, public school foundation or charter school foundation.

1006 (ii) Group 2 includes any business firm that is
1007 renewing a two-year commitment that was fulfilled in the most
1008 recent fiscal year or is applying for tax credits for a
1009 contribution to a prekindergarten scholarship organization in the
1010 same amount that it had contributed in the most recent fiscal
1011 year.

1012 (iii) Group 3 includes any business firm other
1013 than a business firm in Group 1 or Group 2.

1014 (b) "Contribution" means a donation of cash, personal
1015 property or services, the value of which is the net cost of the
1016 donation to the donor or the pro rata hourly wage, including
1017 benefits, of the individual performing the services.

1018 (c) "Authority" means the Mississippi Development
1019 Authority.

1020 (d) "Educational improvement organization" means a
1021 nonprofit entity which:



1022 (i) Is exempt from federal taxation under Section
1023 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514,
1024 26 USC Section 1 et seq.); and

1025 (ii) Contributes at least eighty percent (80%) of
1026 its annual receipts as grants to a public school for innovative
1027 educational programs.

1028 For purposes of this definition, a nonprofit entity
1029 "contributes" its annual cash receipts when it expends or
1030 otherwise irrevocably encumbers those funds for expenditure during
1031 the then current fiscal year of the nonprofit entity or during the
1032 next succeeding fiscal year of the nonprofit entity. A "nonprofit
1033 entity" includes a school district foundation, public school
1034 foundation or charter school foundation.

1035 (e) "Eligible prekindergarten student" means a student,
1036 including an eligible student with a disability, who is enrolled
1037 in a prekindergarten program and is a member of a household with a
1038 maximum annual household income as increased by the applicable
1039 income allowance.

1040 (f) "Eligible student" means a school-age student,
1041 including an eligible student with a disability, who is enrolled
1042 in a school and is a member of a household with a maximum annual
1043 household income as increased by the applicable income allowance.

1044 (g) "Eligible student with a disability" means a
1045 prekindergarten student or a school-age student who meets all of
1046 the following:

1047 (i) Is either enrolled in a special education
1048 school or has otherwise been identified, in accordance with
1049 applicable state and federal law relating to special education
1050 services and programs as a "child with a disability," as defined
1051 in 34 CFR Section 300.8 (relating to a child with a disability).
1052 (ii) Needs special education and related services.
1053 (iii) Is enrolled in a prekindergarten program or
1054 in a school.



1055 (iv) Is a member of a household with a household
1056 income of not more than the maximum annual household income.

1057 (h) "Household" means an individual living alone or
1058 with the following: a spouse, parent and their unemancipated
1059 minor children, other unemancipated minor children who are related
1060 by blood or marriage, or other adults or unemancipated minor
1061 children living in the household who are dependent upon the
1062 individual.

1063 (i) "Household income" means all monies or property
1064 received of whatever nature and from whatever source derived. The
1065 term does not include the following:

1066 (i) Periodic payments for sickness and disability
1067 other than regular wages received during a period of sickness or
1068 disability.

1069 (ii) Disability, retirement or other payments
1070 arising under workers' compensation acts, occupational disease
1071 acts, and similar legislation by any government.

1072 (iii) Payments commonly recognized as old-age or
1073 retirement benefits paid to persons retired from service after
1074 reaching a specific age or after a stated period of employment.

1075 (iv) Payments commonly known as public assistance
1076 or unemployment compensation payments by a governmental agency.

1077 (v) Payments to reimburse actual expenses.

1078 (vi) Payments made by employers or labor unions
1079 for programs covering hospitalization, sickness, disability or
1080 death, supplemental unemployment benefits, strike benefits, social
1081 security and retirement.

1082 (vii) Compensation received by United States
1083 servicemen serving in a combat zone.

1084 (j) "Income allowance" means:

1085 (i) Subject to subparagraph (ii) of this
1086 paragraph, the amount of:



1087 1. Before July 1, 2013, Ten Thousand Dollars
1088 (\$10,000.00) for each eligible student, eligible prekindergarten
1089 student, and dependent member of a household.

1090 2. After June 30, 2014, Twelve Thousand
1091 Dollars (\$12,000.00) for each eligible student, eligible
1092 prekindergarten student, and dependent member of a household.

1093 (ii) Beginning July 1, 2015, the Mississippi
1094 Development Authority shall annually adjust the income allowance
1095 amounts under subparagraph (i) of this paragraph to reflect any
1096 upward changes in the Consumer Price Index for all consumers for
1097 the Mississippi area in the preceding twelve (12) months and shall
1098 immediately submit the adjusted amounts to the Secretary of State
1099 for publication as a notice.

1100 (k) "Innovative educational program" means an advanced
1101 academic or similar program that is not part of the regular
1102 academic program of a public school but that enhances the
1103 curriculum or academic program of the public school or provides
1104 prekindergarten programs to public school students.

1105 (l) "Maximum annual household income" means:

1106 (i) Except as stated in subparagraph (ii) of this
1107 paragraph and subject to subparagraph (iii) of this paragraph, the
1108 following:

1109 1. Before July 1, 2012, not more than Fifty
1110 Thousand Dollars (\$50,000.00).

1111 2. After June 30, 2012, not more than Sixty
1112 Thousand Dollars (\$60,000.00).

1113 (ii) With respect to an eligible student with a
1114 disability, as calculated by multiplying the sum of:

1115 1. The applicable amount under subparagraph
1116 (i) of this paragraph; and

1117 2. The applicable income allowance; by

1118 3. The applicable support level factor

1119 according to the following table:



1120	Support Level	Support Level Factor
1121	1	1.50
1122	2	2.993

1123 (iii) Beginning July 1, 2013, the Mississippi
1124 Development Authority shall annually adjust the income amounts
1125 under subparagraphs (i) and (ii) of this paragraph to reflect any
1126 upward changes in the Consumer Price Index for all consumers for
1127 the Mississippi area in the preceding twelve (12) months and shall
1128 immediately submit the adjusted amounts to the Secretary of State
1129 for publication as a notice.

1130 (m) "Pass-through entity" means a partnership or a
1131 single-member limited liability company treated as a disregarded
1132 entity for federal income tax purposes or a Mississippi S
1133 Corporation as defined in Section 27-8-1.

1134 (n) "Prekindergarten program" means a program of
1135 instruction for three-year-old or four-year-old students that
1136 utilizes a curriculum aligned with the curriculum of the school
1137 with which it is affiliated and that provides:

1138 (i) A minimum of two (2) hours of instructional
1139 and developmental activities per day at least sixty (60) days per
1140 school year; or

1141 (ii) A minimum of two (2) hours of instructional
1142 and developmental activities per day at least twenty (20) days
1143 over the summer recess.

1144 (o) "Prekindergarten scholarship organization" means a
1145 nonprofit entity that:

1146 (i) Either is exempt from federal taxation under
1147 Section 501(c) (3) of the Internal Revenue Code of 1986 or is
1148 operated as a separate segregated fund by a scholarship
1149 organization that has been qualified under this section.

1150 (ii) Contributes at least eighty percent (80%) of
1151 its annual cash receipts to a prekindergarten scholarship program
1152 by expending or otherwise irrevocably encumbering those funds for



1153 distribution during the then current fiscal year of the
1154 organization or during the next succeeding fiscal year of the
1155 organization.

1156 (p) "Prekindergarten scholarship program" means a
1157 program to provide tuition to eligible prekindergarten students to
1158 attend a prekindergarten program operated by or in conjunction
1159 with a school located in this state and that includes an
1160 application and review process for the purpose of making awards to
1161 eligible prekindergarten students and awards scholarships to
1162 eligible prekindergarten students without limiting availability to
1163 only students of one (1) school.

1164 (q) "Scholarship" means an award under a scholarship
1165 program.

1166 (r) "Scholarship organization" means a nonprofit entity
1167 that:

1168 (i) Is exempt from federal taxation under Section
1169 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514,
1170 26 USC Section 1 et seq.); and

1171 (ii) Contributes at least eighty percent (80%) of
1172 its annual cash receipts to a scholarship program. For purposes
1173 of this definition, a nonprofit entity "contributes" its annual
1174 cash receipts to a scholarship program when it expends or
1175 otherwise irrevocably encumbers those funds for distribution
1176 during the then current fiscal year of the nonprofit entity or
1177 during the next succeeding fiscal year of the nonprofit entity.

1178 (s) "Scholarship program" means a program to provide
1179 tuition to eligible students to attend a school located in this
1180 state. A scholarship program must include an application and
1181 review process for the purpose of making awards to eligible
1182 students. The award of scholarships to eligible students shall be
1183 made without limiting availability to only students of one (1)
1184 school.



1185 (t) "School" means an elementary school or secondary
1186 school at which the compulsory attendance requirements of the
1187 state may be met or a public or nonpublic prekindergarten.

1188 (u) "School age" means from the earliest admission age
1189 to a school's prekindergarten or kindergarten program or, when no
1190 prekindergarten or kindergarten program is provided, the school's
1191 earliest admission age for students, until the end of the school
1192 year the student attains twenty-one (21) years of age or
1193 graduation from high school, whichever occurs first.

1194 (v) "Special education school" means a school or
1195 program within a school that is designated specifically and
1196 exclusively for students with any of the disabilities listed in 34
1197 CFR Section 300.8 (relating to a child with a disability) and
1198 meets one (1) of the following:

1199 (i) Is licensed;

1200 (ii) Is accredited by an accrediting association
1201 approved by the State Board of Education;

1202 (iii) Is a school for the blind or deaf receiving
1203 state appropriations; or

1204 (iv) Is operated by or under the authority of a
1205 bona fide religious institution or by the state or any political
1206 subdivision thereof.

1207 (w) "Support level" means the level of support needed
1208 by an eligible student with a disability, as stated in the
1209 following:

1210 (i) Support level 1. The student is not enrolled
1211 in a special education school.

1212 (ii) Support level 2. The student is enrolled in
1213 a special education school.

1214 (x) "Tax credit" means the educational improvement tax
1215 credit established under this section.

1216 **SECTION 15. Qualification and application.** (1)

1217 **Establishment.** An educational improvement tax credit program is



1218 established to enhance the educational opportunities available to
1219 all students in this state.

1220 (2) **Information.** In order to qualify under this section, a
1221 scholarship organization, a prekindergarten scholarship
1222 organization, or an educational improvement organization must
1223 submit information to the Mississippi Development Authority that
1224 enables the authority to confirm that the organization is exempt
1225 from taxation under Section 501(c)(3) of the Internal Revenue Code
1226 of 1986.

1227 (3) **Scholarship organizations and prekindergarten**
1228 **scholarship organizations.** A scholarship organization or
1229 prekindergarten scholarship organization must certify to the
1230 authority that the organization is eligible to participate in the
1231 program established under this section and must agree to annually
1232 report the following information to the authority by September 1
1233 of each year:

1234 (a) (i) The number of scholarships awarded during the
1235 immediately preceding school year to eligible prekindergarten
1236 students.

1237 (ii) The total and average amounts of scholarships
1238 awarded during the immediately preceding school year to eligible
1239 prekindergarten students.

1240 (iii) The number of scholarships awarded during
1241 the immediately preceding school year to eligible students in
1242 Kindergarten through Grade 8.

1243 (iv) The total and average amounts of scholarships
1244 awarded during the immediately preceding school year to eligible
1245 students in Kindergarten through Grade 8.

1246 (v) The number of scholarships awarded during the
1247 immediately preceding school year to eligible students in Grades 9
1248 through 12.



1249 (vi) The total and average amounts of scholarships
1250 awarded during the immediately preceding school year to eligible
1251 students in Grades 9 through 12.

1252 (vii) Where the scholarship organization or
1253 prekindergarten scholarship organization collects information on a
1254 county-by-county basis, the total number and the total dollar
1255 amount of scholarships awarded during the immediately preceding
1256 school year to residents of each county in which the scholarship
1257 organization or prekindergarten scholarship organization awarded
1258 scholarships.

1259 (b) The information required under paragraph (a) of
1260 this subsection shall be submitted on a form provided by the
1261 authority. No later than May 1 of each year, the authority shall
1262 annually distribute such sample forms, together with the forms on
1263 which the reports are required to be made, to each listed
1264 scholarship organization and prekindergarten scholarship
1265 organization.

1266 (c) The authority may not require any other information
1267 to be provided by scholarship organizations or prekindergarten
1268 scholarship organizations, except as expressly authorized in this
1269 section.

1270 (4) **Educational improvement organization.** (a) An
1271 application submitted by an educational improvement organization
1272 must describe its proposed innovative educational program or
1273 programs in a form prescribed by the authority. In prescribing
1274 the form, the authority shall consult with the Department of
1275 Education as necessary. The authority shall review and approve or
1276 disapprove the application. In order to be eligible to
1277 participate in the program established under this section, an
1278 educational improvement organization must agree to annually report
1279 the following information to the authority by September 1 of each
1280 year:



1281 (i) The name of the innovative educational program
1282 or programs and the total amount of the grant or grants made to
1283 those programs during the immediately preceding school year.

1284 (ii) A description of how each grant was utilized
1285 during the immediately preceding school year and a description of
1286 any demonstrated or expected innovative educational improvements.

1287 (iii) The names of the public schools and school
1288 districts where innovative educational programs that received
1289 grants during the immediately preceding school year were
1290 implemented.

1291 (iv) Where the educational improvement
1292 organization collects information on a county-by-county basis, the
1293 total number and the total dollar amount of grants made during the
1294 immediately preceding school year for programs at public schools
1295 in each county in which the educational improvement organization
1296 made grants.

1297 (b) The information required under paragraph (a) of
1298 this subsection shall be submitted on a form provided by the
1299 authority. No later than May 1 of each year, the authority shall
1300 annually distribute such sample forms, together with the forms on
1301 which the reports are required to be made, to each listed
1302 educational improvement organization.

1303 (c) The authority may not require any other information
1304 to be provided by educational improvement organizations, except as
1305 expressly authorized in this section.

1306 (5) **Notification.** The authority shall notify the
1307 scholarship organization, prekindergarten scholarship organization
1308 or educational improvement organization that the organization
1309 meets the requirements of this section for that fiscal year no
1310 later than sixty (60) days after the organization has submitted
1311 the information required under this section.

1312 (6) **Publication.** The authority shall annually publish a
1313 list of each scholarship organization, prekindergarten scholarship



1314 organization, or educational improvement organization qualified
1315 under this section. The list shall also be posted and updated as
1316 necessary on the publicly accessible Internet website of the
1317 authority.

1318 **SECTION 16. Application.** (1) **Scholarship organization or**
1319 **prekindergarten scholarship organization.** In order to receive a
1320 tax credit, a business firm shall apply to the authority. A
1321 business firm shall receive a tax credit if the scholarship
1322 organization or prekindergarten scholarship organization that
1323 receives the contribution appears on the list established under
1324 Section 15 of this act.

1325 (2) **Educational improvement organization.** In order to
1326 receive a tax credit, a business firm shall apply to the
1327 authority. A business firm shall receive a tax credit if the
1328 authority has approved the program provided by the educational
1329 improvement organization that receives the contribution.

1330 (3) **Contributions.** A contribution by a business firm to a
1331 scholarship organization, prekindergarten scholarship
1332 organization, or educational improvement organization shall be
1333 made no later than sixty (60) days following the approval of an
1334 application under subsection (1) or (2) of this section.

1335 **SECTION 17. Tax credit.** (1) **Scholarship or educational**
1336 **improvement organizations.** In accordance with this act, the
1337 Mississippi Department of Revenue shall grant a tax credit against
1338 any income tax due to a business firm providing proof of a
1339 contribution to a scholarship organization or educational
1340 improvement organization in the taxable year in which the
1341 contribution is made which shall not exceed seventy-five percent
1342 (75%) of the total amount contributed during the taxable year by
1343 the business firm. The tax credit shall not exceed Three Hundred
1344 Thousand Dollars (\$300,000.00) annually per business firm for
1345 contributions made to scholarship organizations or educational
1346 improvement organizations.



1347 (2) **Additional amount.** The Mississippi Department of
1348 Revenue shall grant a tax credit of up to ninety percent (90%) of
1349 the total amount contributed during the taxable year if the
1350 business firm provides a written commitment to provide the
1351 scholarship organization or educational improvement organization
1352 with the same amount of contribution for two (2) consecutive tax
1353 years. The business firm must provide the written commitment
1354 under this subsection to the authority at the time of application.

1355 (3) **Prekindergarten scholarship organizations.** In
1356 accordance with this act, the Mississippi Department of Revenue
1357 shall grant a tax credit against any income tax due to a business
1358 firm providing proof of a contribution to a prekindergarten
1359 scholarship organization in the taxable year in which the
1360 contribution is made which shall be equal to one hundred percent
1361 (100%) of the first Ten Thousand Dollars (\$10,000.00) contributed
1362 during the taxable year by the business firm, and which shall not
1363 exceed ninety percent (90%) of the remaining amount contributed
1364 during the taxable year by the business firm. The tax credit
1365 shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00)
1366 annually per business firm for contributions made to
1367 prekindergarten scholarship organizations.

1368 (4) **Combination of tax credits.** A business firm may receive
1369 tax credits from the Department of Revenue in any tax year for any
1370 combination of contributions under subsection (1), (2) or (3) of
1371 this section. In no case may a business firm receive tax credits
1372 in any tax year in excess of Three Hundred Thousand Dollars
1373 (\$300,000.00) for contributions under subsections (1) and (2) of
1374 this section. In no case shall a business firm receive tax
1375 credits in any tax year in excess of One Hundred Fifty Thousand
1376 Dollars (\$150,000.00) for contributions under subsection (3) of
1377 this section.

1378 (5) **Pass-through entity.** (a) If a pass-through entity does
1379 not intend to use all approved tax credits under this section, it



1380 may elect in writing to transfer all or a portion of the tax
1381 credit to shareholders, members or partners in proportion to the
1382 share of the entity's distributive income to which the
1383 shareholder, member or partner is entitled for use in the taxable
1384 year in which the contribution is made or in the taxable year
1385 immediately following the year in which the contribution is made.
1386 The election shall designate the year in which the transferred tax
1387 credits are to be used and shall be made according to procedures
1388 established by the Department of Revenue.

1389 (b) A pass-through entity and a shareholder, member or
1390 partner of a pass-through entity shall not claim the tax credit
1391 under this section for the same contribution.

1392 (c) The shareholder, member or partner may not
1393 carryforward, carryback, obtain a refund of, or sell or assign the
1394 tax credit.

1395 (d) The shareholder, member or partner may claim the
1396 credit on a joint return, but the tax credit may not exceed the
1397 separate income of that shareholder, member or partner.

1398 (6) **Restriction on applicability of credits.** No tax credits
1399 shall be applied against any tax withheld by an employer from an
1400 employee.

1401 (7) **Time of application for credits.** (a) The authority may
1402 accept applications beginning on May 15 from business firms for
1403 tax credits available during a fiscal year that is to begin on
1404 July 1.

1405 (b) If, on July 1 of a fiscal year, applications for
1406 tax credits available during the fiscal year exceed the total
1407 aggregate amount of tax credits available for the fiscal year, the
1408 authority shall approve applications for tax credits on the
1409 following basis, subject to the provisions of this section:

1410 (i) Group 1 firms whose applications were received
1411 by July 1 shall be accorded first priority in the approval of tax
1412 credit applications. If tax credits applied for by Group 1 firms



1413 exceed the total aggregate amount of tax credits available for the
1414 program under Section 18 of this act, the authority shall approve
1415 on a pro rata basis the applications of all Group 1 firms that
1416 applied by July 1, and the applications of Group 2 and Group 3
1417 firms shall be denied. Approval of a reduced tax credit under
1418 this subparagraph shall not disqualify a Group 1 firm from
1419 receiving a ninety percent (90%) tax credit under subsection (2)
1420 of this section even if the amount of tax credit approved would
1421 require the Group 1 firm to make a lower scholarship contribution
1422 in the second year of a two-year commitment.

1423 (ii) If tax credits remain available after credits
1424 have been awarded under subparagraph (i) of this paragraph, Group
1425 2 firms whose applications were received by July 1 shall be
1426 accorded priority in the approval of applications for the
1427 remaining tax credits. If the sum of the tax credits approved
1428 under subparagraph (i) of this paragraph and the credits applied
1429 for by Group 2 firms exceeds the total aggregate amount of tax
1430 credits available for the program under Section 18 of this act,
1431 the authority shall approve on a pro rata basis the applications
1432 for the remaining tax credits submitted by all Group 2 firms that
1433 applied by July 1, and the applications of Group 3 firms shall be
1434 denied.

1435 (iii) If tax credits remain available on July 1
1436 after credits have been awarded under subparagraphs (i) and (ii)
1437 of this paragraph, applications of Group 3 firms shall be
1438 approved, on a pro rata basis within that group if necessary.
1439 Thereafter, the authority shall approve the applications of all
1440 business firms on a daily basis. If, on any day after July 1, the
1441 cumulative sum of the tax credits approved and the tax credits
1442 applied for on that day exceeds the total aggregate amount of tax
1443 credits available for the program under Section 18 of this act the
1444 authority shall approve on a pro rata basis the applications
1445 received on that day.



1446 **SECTION 18. Limitations.** (1) **Amount.** (a) For the fiscal
1447 years 2012-2013, 2013-2014 and 2014-2015, the total aggregate
1448 amount of all tax credits approved for scholarship organizations
1449 and educational improvement organizations shall not exceed
1450 Ninety-two Million Dollars (\$92,000,000.00) in a fiscal year. No
1451 less than seventy-five percent (75%) of the total aggregate amount
1452 of all tax credits approved shall be used to provide tax credits
1453 for contributions from business firms to scholarship
1454 organizations. No less than twenty-five (25%) of the total
1455 aggregate amount of all tax credits approved shall be used to
1456 provide tax credits for contributions from business firms to
1457 educational improvement organizations.

1458 (i) From the tax credits for contributions by
1459 business firms to educational improvement organizations, twenty
1460 percent (20%) of the available amount shall initially be set aside
1461 for contributions by business firms to educational improvement
1462 organizations that are also school district foundations, public
1463 school foundations, or charter school foundations and shall be
1464 distributed in accordance with Section 17 of this act.

1465 (ii) tax credits remaining from the amount set
1466 aside in subparagraph (i) of this paragraph after July 1 of each
1467 year shall be made available to business firms for contributions
1468 to any educational improvement organization and shall be
1469 distributed in accordance with Section 17 of this act.

1470 (b) (i) Subject to adjustment under subparagraph (ii)
1471 of this paragraph, in the fiscal year 2015-2016 and each fiscal
1472 year thereafter, the total aggregate amount of all tax credits
1473 available shall equal the total aggregate amount of all tax
1474 credits available in the prior fiscal year.

1475 (ii) Beginning in the fiscal year 2015-2016, in
1476 any fiscal year in which the total aggregate amount of all tax
1477 credits approved for the prior fiscal year is equal to or greater
1478 than ninety percent (90%) of the total aggregate amount of all tax



1479 credits available for the prior fiscal year, the total aggregate
1480 amount of all tax credits available shall increase by five percent
1481 (5%). The authority shall publish on its Internet website the
1482 total aggregate amount of all tax credits available when the
1483 amount is increased under this paragraph.

1484 (c) For the fiscal years 2012-2013, 2013-2014 and
1485 2014-2015, the total aggregate amount of all tax credits approved
1486 for contributions from business firms to prekindergarten
1487 scholarship programs shall not exceed Eight Million Dollars
1488 (\$8,000,000.00) in a fiscal year.

1489 (d) (i) Subject to adjustment in subparagraph (ii) of
1490 this paragraph, in the fiscal year 2015-2016 and each fiscal year
1491 thereafter, the total aggregate amount of all tax credits
1492 available to prekindergarten scholarship programs shall equal the
1493 total aggregate amount of all tax credits available to
1494 prekindergarten scholarship programs in the prior fiscal year.

1495 (ii) Beginning in the fiscal year 2015-2016, in
1496 any fiscal year in which the total aggregate amount of all tax
1497 credits available is increased under paragraph (b) of this
1498 subsection, the total aggregate amount of all tax credits
1499 available for prekindergarten scholarship programs shall increase
1500 by five percent (5%). The authority shall publish on its Internet
1501 website the total aggregate amount of all tax credits available
1502 for prekindergarten scholarship programs when the amount is
1503 increased under this paragraph.

1504 (2) **Activities.** No tax credit shall be approved for
1505 activities that are a part of a business firm's normal course of
1506 business.

1507 (3) **Tax liability.** (a) Except as provided in paragraph (b)
1508 of this subsection, a tax credit granted for any one (1) taxable
1509 year may not exceed the tax liability of a business firm.

1510 (b) In the case of a credit granted to a pass-through
1511 entity which elects to transfer the credit according to Section 17



1512 of this act, a tax credit granted for any one (1) taxable year and
1513 transferred to a shareholder, member or partner may not exceed the
1514 tax liability of the shareholder, member or partner.

1515 (4) **Use.** A tax credit not used by the applicant in the
1516 taxable year the contribution was made or in the year designated
1517 by the shareholder, member or partner to whom the credit was
1518 transferred may not be carried forward or carried back and is not
1519 refundable or transferable.

1520 (5) **Nontaxable income.** A scholarship received by an
1521 eligible student or eligible prekindergarten student shall not be
1522 considered to be taxable income for the purposes of the
1523 Mississippi Income Tax Law.

1524 **SECTION 19. Lists.** The Department of Revenue shall provide
1525 to the Legislature, by June 30 of each year, a list of all
1526 scholarship organizations, prekindergarten scholarship
1527 organizations and educational improvement organizations that
1528 receive contributions from business firms granted a tax credit.

1529 **SECTION 20. Guidelines.** The Mississippi Development
1530 Authority, in consultation with the Department of Education, shall
1531 develop guidelines to determine the eligibility of an innovative
1532 educational program.

1533 **SECTION 21.** Sections 14 through 20 of this act shall be
1534 codified in Chapter 7, Title 27, Mississippi Code of 1972.

1535 **SECTION 22.** Section 27-7-17, Mississippi Code of 1972, is
1536 amended as follows:

1537 27-7-17. In computing taxable income, there shall be allowed
1538 as deductions:

1539 (1) **Business deductions.**

1540 (a) **Business expenses.** All the ordinary and necessary
1541 expenses paid or incurred during the taxable year in carrying on
1542 any trade or business, including a reasonable allowance for
1543 salaries or other compensation for personal services actually
1544 rendered; nonreimbursable traveling expenses incident to current



1545 employment, including a reasonable amount expended for meals and
1546 lodging while away from home in the pursuit of a trade or
1547 business; and rentals or other payments required to be made as a
1548 condition of the continued use or possession, for purposes of the
1549 trade or business of property to which the taxpayer has not taken
1550 or is not taking title or in which he had no equity. Expense
1551 incurred in connection with earning and distributing nontaxable
1552 income is not an allowable deduction. Limitations on
1553 entertainment expenses shall conform to the provisions of the
1554 Internal Revenue Code of 1986.

1555 (b) **Interest.** All interest paid or accrued during the
1556 taxable year on business indebtedness, except interest upon the
1557 indebtedness for the purchase of tax-free bonds, or any stocks,
1558 the dividends from which are nontaxable under the provisions of
1559 this article; provided, however, in the case of securities
1560 dealers, interest payments or accruals on loans, the proceeds of
1561 which are used to purchase tax-exempt securities, shall be
1562 deductible if income from otherwise tax-free securities is
1563 reported as income. Investment interest expense shall be limited
1564 to investment income. Interest expense incurred for the purchase
1565 of treasury stock, to pay dividends, or incurred as a result of an
1566 undercapitalized affiliated corporation may not be deducted unless
1567 an ordinary and necessary business purpose can be established to
1568 the satisfaction of the commissioner. For the purposes of this
1569 paragraph, the phrase "interest upon the indebtedness for the
1570 purchase of tax-free bonds" applies only to the indebtedness
1571 incurred for the purpose of directly purchasing tax-free bonds and
1572 does not apply to any other indebtedness incurred in the regular
1573 course of the taxpayer's business. Any corporation, association,
1574 organization or other entity taxable under Section 27-7-23(c)
1575 shall allocate interest expense as provided in Section
1576 27-7-23(c) (3) (I).



1577 (c) **Taxes.** Taxes paid or accrued within the taxable
1578 year, except state and federal income taxes, excise taxes based on
1579 or measured by net income, estate and inheritance taxes, gift
1580 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
1581 use taxes unless incurred as an item of expense in a trade or
1582 business or in the production of taxable income. In the case of
1583 an individual, taxes permitted as an itemized deduction under the
1584 provisions of subsection (3)(a) of this section are to be claimed
1585 thereunder.

1586 (d) **Business losses.**

1587 (i) Losses sustained during the taxable year not
1588 compensated for by insurance or otherwise, if incurred in trade or
1589 business, or nonbusiness transactions entered into for profit.

1590 (ii) Limitations on losses from passive activities
1591 and rental real estate shall conform to the provisions of the
1592 Internal Revenue Code of 1986.

1593 (e) **Bad debts.** Losses from debts ascertained to be
1594 worthless and charged off during the taxable year, if sustained in
1595 the conduct of the regular trade or business of the taxpayer;
1596 provided, that such losses shall be allowed only when the taxpayer
1597 has reported as income, on the accrual basis, the amount of such
1598 debt or account.

1599 (f) **Depreciation.** A reasonable allowance for
1600 exhaustion, wear and tear of property used in the trade or
1601 business, or rental property, and depreciation upon buildings
1602 based upon their reasonable value as of March 16, 1912, if
1603 acquired prior thereto, and upon cost if acquired subsequent to
1604 that date.

1605 (g) **Depletion.** In the case of mines, oil and gas
1606 wells, other natural deposits and timber, a reasonable allowance
1607 for depletion and for depreciation of improvements, based upon
1608 cost, including cost of development, not otherwise deducted, or
1609 fair market value as of March 16, 1912, if acquired prior to that



1610 date, such allowance to be made upon regulations prescribed by the
1611 commissioner, with the approval of the Governor.

1612 (h) **Contributions or gifts.** Except as otherwise
1613 provided in paragraph (p) of this subsection or subsection (3)(a)
1614 of this section for individuals, contributions or gifts made by
1615 corporations within the taxable year to corporations,
1616 organizations, associations or institutions, including Community
1617 Chest funds, foundations and trusts created solely and exclusively
1618 for religious, charitable, scientific or educational purposes, or
1619 for the prevention of cruelty to children or animals, no part of
1620 the net earnings of which inure to the benefit of any private
1621 stockholder or individual. This deduction shall be allowed in an
1622 amount not to exceed twenty percent (20%) of the net income. Such
1623 contributions or gifts shall be allowable as deductions only if
1624 verified under rules and regulations prescribed by the
1625 commissioner, with the approval of the Governor. Contributions
1626 made in any form other than cash shall be allowed as a deduction,
1627 subject to the limitations herein provided, in an amount equal to
1628 the actual market value of the contributions at the time the
1629 contribution is actually made and consummated.

1630 (i) **Reserve funds - insurance companies.** In the case
1631 of insurance companies the net additions required by law to be
1632 made within the taxable year to reserve funds when such reserve
1633 funds are maintained for the purpose of liquidating policies at
1634 maturity.

1635 (j) **Annuity income.** The sums, other than dividends,
1636 paid within the taxpayer year on policy or annuity contracts when
1637 such income has been included in gross income.

1638 (k) **Contributions to employee pension plans.**
1639 Contributions made by an employer to a plan or a trust forming
1640 part of a pension plan, stock bonus plan, disability or
1641 death-benefit plan, or profit-sharing plan of such employer for
1642 the exclusive benefit of some or all of his, their, or its



1643 employees, or their beneficiaries, shall be deductible from his,
1644 their, or its income only to the extent that, and for the taxable
1645 year in which, the contribution is deductible for federal income
1646 tax purposes under the Internal Revenue Code of 1986 and any other
1647 provisions of similar purport in the Internal Revenue Laws of the
1648 United States, and the rules, regulations, rulings and
1649 determinations promulgated thereunder, provided that:

1650 (i) The plan or trust be irrevocable.

1651 (ii) The plan or trust constitute a part of a
1652 pension plan, stock bonus plan, disability or death-benefit plan,
1653 or profit-sharing plan for the exclusive benefit of some or all of
1654 the employer's employees and/or officers, or their beneficiaries,
1655 for the purpose of distributing the corpus and income of the plan
1656 or trust to such employees and/or officers, or their
1657 beneficiaries.

1658 (iii) No part of the corpus or income of the plan
1659 or trust can be used for purposes other than for the exclusive
1660 benefit of employees and/or officers, or their beneficiaries.

1661 Contributions to all plans or to all trusts of real or
1662 personal property (or real and personal property combined) or to
1663 insured plans created under a retirement plan for which provision
1664 has been made under the laws of the United States of America,
1665 making such contributions deductible from income for federal
1666 income tax purposes, shall be deductible only to the same extent
1667 under the Income Tax Laws of the State of Mississippi.

1668 (1) **Net operating loss carrybacks and carryovers.** A
1669 net operating loss for any taxable year ending after December 31,
1670 1993, and taxable years thereafter, shall be a net operating loss
1671 carryback to each of the three (3) taxable years preceding the
1672 taxable year of the loss. If the net operating loss for any
1673 taxable year is not exhausted by carrybacks to the three (3)
1674 taxable years preceding the taxable year of the loss, then there
1675 shall be a net operating loss carryover to each of the fifteen



1676 (15) taxable years following the taxable year of the loss
1677 beginning with any taxable year after December 31, 1991.

1678 For any taxable year ending after December 31, 1997, the
1679 period for net operating loss carrybacks and net operating loss
1680 carryovers shall be the same as those established by the Internal
1681 Revenue Code and the rules, regulations, rulings and
1682 determinations promulgated thereunder as in effect at the taxable
1683 year end or on December 31, 2000, whichever is earlier.

1684 A net operating loss for any taxable year ending after
1685 December 31, 2001, and taxable years thereafter, shall be a net
1686 operating loss carryback to each of the two (2) taxable years
1687 preceding the taxable year of the loss. If the net operating loss
1688 for any taxable year is not exhausted by carrybacks to the two (2)
1689 taxable years preceding the taxable year of the loss, then there
1690 shall be a net operating loss carryover to each of the twenty (20)
1691 taxable years following the taxable year of the loss beginning
1692 with any taxable year after the taxable year of the loss.

1693 The term "net operating loss," for the purposes of this
1694 paragraph, shall be the excess of the deductions allowed over the
1695 gross income; provided, however, the following deductions shall
1696 not be allowed in computing same:

1697 (i) No net operating loss deduction shall be
1698 allowed.

1699 (ii) No personal exemption deduction shall be
1700 allowed.

1701 (iii) Allowable deductions which are not
1702 attributable to taxpayer's trade or business shall be allowed only
1703 to the extent of the amount of gross income not derived from such
1704 trade or business.

1705 Any taxpayer entitled to a carryback period as provided by
1706 this paragraph may elect to relinquish the entire carryback period
1707 with respect to a net operating loss for any taxable year ending
1708 after December 31, 1991. The election shall be made in the manner



1709 prescribed by the Department of Revenue and shall be made by the
1710 due date, including extensions of time, for filing the taxpayer's
1711 return for the taxable year of the net operating loss for which
1712 the election is to be in effect. The election, once made for any
1713 taxable year, shall be irrevocable for that taxable year.

1714 (m) **Amortization of pollution or environmental control**
1715 **facilities.** Allowance of deduction. Every taxpayer, at his
1716 election, shall be entitled to a deduction for pollution or
1717 environmental control facilities to the same extent as that
1718 allowed under the Internal Revenue Code and the rules,
1719 regulations, rulings and determinations promulgated thereunder.

1720 (n) **Dividend distributions - real estate investment**
1721 **trusts.** "Real estate investment trust" (hereinafter referred to
1722 as REIT) shall have the meaning ascribed to such term in Section
1723 856 of the federal Internal Revenue Code of 1986, as amended. A
1724 REIT is allowed a dividend distributed deduction if the dividend
1725 distributions meet the requirements of Section 857 or are
1726 otherwise deductible under Section 858 or 860, federal Internal
1727 Revenue Code of 1986, as amended. In addition:

1728 (i) A dividend distributed deduction shall only be
1729 allowed for dividends paid by a publicly traded REIT. A qualified
1730 REIT subsidiary shall be allowed a dividend distributed deduction
1731 if its owner is a publicly traded REIT.

1732 (ii) Income generated from real estate contributed
1733 or sold to a REIT by a shareholder or related party shall not give
1734 rise to a dividend distributed deduction, unless the shareholder
1735 or related party would have received the dividend distributed
1736 deduction under this chapter.

1737 (iii) A holding corporation receiving a dividend
1738 from a REIT shall not be allowed the deduction in Section
1739 27-7-15(4)(t).

1740 (iv) Any REIT not allowed the dividend distributed
1741 deduction in the federal Internal Revenue Code of 1986, as



1742 amended, shall not be allowed a dividend distributed deduction
1743 under this chapter.

1744 The commissioner is authorized to promulgate rules and
1745 regulations consistent with the provisions in Section 269 of the
1746 federal Internal Revenue Code of 1986, as amended, so as to
1747 prevent the evasion or avoidance of state income tax.

1748 (o) **Contributions to college savings trust fund**
1749 **accounts.** Contributions or payments to a Mississippi Affordable
1750 College Savings Program account are deductible as provided under
1751 Section 37-155-113. Payments made under a prepaid tuition
1752 contract entered into under the Mississippi Prepaid Affordable
1753 College Tuition Program are deductible as provided under Section
1754 37-155-17.

1755 (p) **Contributions of human pharmaceutical products.** To
1756 the extent that a "major supplier" as defined in Section
1757 27-13-13(2) (d) contributes human pharmaceutical products in excess
1758 of Two Hundred Fifty Million Dollars (\$250,000,000.00) as
1759 determined under Section 170 of the Internal Revenue Code, the
1760 charitable contribution limitation associated with those donations
1761 shall follow the federal limitation but cannot result in the
1762 Mississippi net income being reduced below zero.

1763 (2) **Restrictions on the deductibility of certain intangible**
1764 **expenses and interest expenses with a related member.**

1765 (a) As used in this subsection (2):

1766 (i) "Intangible expenses and costs" include:

1767 1. Expenses, losses and costs for, related
1768 to, or in connection directly or indirectly with the direct or
1769 indirect acquisition, use, maintenance or management, ownership,
1770 sale, exchange or any other disposition of intangible property to
1771 the extent such amounts are allowed as deductions or costs in
1772 determining taxable income under this chapter;



1773 2. Expenses or losses related to or incurred
1774 in connection directly or indirectly with factoring transactions
1775 or discounting transactions;

1776 3. Royalty, patent, technical and copyright
1777 fees;

1778 4. Licensing fees; and

1779 5. Other similar expenses and costs.

1780 (ii) "Intangible property" means patents, patent
1781 applications, trade names, trademarks, service marks, copyrights
1782 and similar types of intangible assets.

1783 (iii) "Interest expenses and cost" means amounts
1784 directly or indirectly allowed as deductions for purposes of
1785 determining taxable income under this chapter to the extent such
1786 interest expenses and costs are directly or indirectly for,
1787 related to, or in connection with the direct or indirect
1788 acquisition, maintenance, management, ownership, sale, exchange or
1789 disposition of intangible property.

1790 (iv) "Related member" means an entity or person
1791 that, with respect to the taxpayer during all or any portion of
1792 the taxable year, is a related entity, a component member as
1793 defined in the Internal Revenue Code, or is an entity or a person
1794 to or from whom there is attribution of stock ownership in
1795 accordance with Section 1563(e) of the Internal Revenue Code.

1796 (v) "Related entity" means:

1797 1. A stockholder who is an individual or a
1798 member of the stockholder's family, as defined in regulations
1799 prescribed by the commissioner, if the stockholder and the members
1800 of the stockholder's family own, directly, indirectly,
1801 beneficially or constructively, in the aggregate, at least fifty
1802 percent (50%) of the value of the taxpayer's outstanding stock;

1803 2. A stockholder, or a stockholder's
1804 partnership, limited liability company, estate, trust or
1805 corporation, if the stockholder and the stockholder's



1806 partnerships, limited liability companies, estates, trusts and
1807 corporations own, directly, indirectly, beneficially or
1808 constructively, in the aggregate, at least fifty percent (50%) of
1809 the value of the taxpayer's outstanding stock;

1810 3. A corporation, or a party related to the
1811 corporation in a manner that would require an attribution of stock
1812 from the corporation to the party or from the party to the
1813 corporation, if the taxpayer owns, directly, indirectly,
1814 beneficially or constructively, at least fifty percent (50%) of
1815 the value of the corporation's outstanding stock under regulation
1816 prescribed by the commissioner;

1817 4. Any entity or person which would be a
1818 related member under this section if the taxpayer were considered
1819 a corporation for purposes of this section.

1820 (b) In computing net income, a taxpayer shall add back
1821 otherwise deductible interest expenses and costs and intangible
1822 expenses and costs directly or indirectly paid, accrued to or
1823 incurred, in connection directly or indirectly with one or more
1824 direct or indirect transactions with one or more related members.

1825 (c) The adjustments required by this subsection shall
1826 not apply to such portion of interest expenses and costs and
1827 intangible expenses and costs that the taxpayer can establish
1828 meets one (1) of the following:

1829 (i) The related member directly or indirectly
1830 paid, accrued or incurred such portion to a person during the same
1831 income year who is not a related member; or

1832 (ii) The transaction giving rise to the interest
1833 expenses and costs or intangible expenses and costs between the
1834 taxpayer and related member was done primarily for a valid
1835 business purpose other than the avoidance of taxes, and the
1836 related member is not primarily engaged in the acquisition, use,
1837 maintenance or management, ownership, sale, exchange or any other
1838 disposition of intangible property.



1839 (d) Nothing in this subsection shall require a taxpayer
1840 to add to its net income more than once any amount of interest
1841 expenses and costs or intangible expenses and costs that the
1842 taxpayer pays, accrues or incurs to a related member.

1843 (e) The commissioner may prescribe such regulations as
1844 necessary or appropriate to carry out the purposes of this
1845 subsection, including, but not limited to, clarifying definitions
1846 of terms, rules of stock attribution, factoring and discount
1847 transactions.

1848 (3) **Individual nonbusiness deductions.**

1849 (a) The amount allowable for individual nonbusiness
1850 itemized deductions for federal income tax purposes where the
1851 individual is eligible to elect, for the taxable year, to itemize
1852 deductions on his federal return except the following:

1853 (i) The deduction for state income taxes paid or
1854 other taxes allowed for federal purposes in lieu of state income
1855 taxes paid;

1856 (ii) The deduction for gaming losses from gaming
1857 establishments;

1858 (iii) The deduction for taxes collected by
1859 licensed gaming establishments pursuant to Section 27-7-901;

1860 (iv) The deduction for taxes collected by gaming
1861 establishments pursuant to Section 27-7-903.

1862 (b) In lieu of the individual nonbusiness itemized
1863 deductions authorized in paragraph (a), for all purposes other
1864 than ordinary and necessary expenses paid or incurred during the
1865 taxable year in carrying on any trade or business, an optional
1866 standard deduction of:

1867 (i) Three Thousand Four Hundred Dollars
1868 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
1869 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
1870 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter



1871 in the case of married individuals filing a joint or combined
1872 return;

1873 (ii) One Thousand Seven Hundred Dollars
1874 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
1875 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
1876 Three Hundred Dollars (\$2,300.00) for each calendar year
1877 thereafter in the case of married individuals filing separate
1878 returns;

1879 (iii) Three Thousand Four Hundred Dollars
1880 (\$3,400.00) in the case of a head of family; or

1881 (iv) Two Thousand Three Hundred Dollars
1882 (\$2,300.00) in the case of an individual who is not married.

1883 In the case of a husband and wife living together, having
1884 separate incomes, and filing combined returns, the standard
1885 deduction authorized may be divided in any manner they choose. In
1886 the case of separate returns by a husband and wife, the standard
1887 deduction shall not be allowed to either if the taxable income of
1888 one of the spouses is determined without regard to the standard
1889 deduction.

1890 (c) A nonresident individual shall be allowed the same
1891 individual nonbusiness deductions as are authorized for resident
1892 individuals in paragraph (a) or (b) of this subsection; however,
1893 the nonresident individual is entitled only to that proportion of
1894 the individual nonbusiness deductions as his net income from
1895 sources within the State of Mississippi bears to his total or
1896 entire net income from all sources.

1897 (d) The following definitions apply throughout this
1898 paragraph (d):

1899 (i) "Dependent child" means an individual who:

1900 1. Is eligible to receive a free elementary
1901 or high school education a Mississippi Public School;

1902 2. Qualifies as a dependent (as defined in
1903 Section 152 of the Internal Revenue Code) of the taxpayer; and



1904 3. Is the natural or adopted child or the
1905 taxpayer or, if custody of the child has been awarded in a court
1906 proceeding to someone other than the mother or father, the
1907 court-appointed guardian or custodian of the child.

1908 If the parents of a child are divorced, the term refers to the
1909 parent who is eligible to take the exemption for the child under
1910 Section 151 of the Internal Revenue Code.

1911 (ii) "Education expenditure" refers to any
1912 expenditures made in connection with enrollment, attendance, or
1913 participation of the taxpayer's dependent child in a private
1914 elementary or high school education program in Mississippi. The
1915 term includes tuition, fees, computer software, textbooks,
1916 workbooks, curricula, school supplies (other than personal
1917 computers), and other written materials used primarily for
1918 academic instruction or for academic tutoring, or both.

1919 (iii) "Private elementary or high school education
1920 program" means:

1921 1. Homeschooling; or

1922 2. Attendance at a private school;

1923 in Mississippi that satisfies a child's obligation under Section
1924 37-13-91 for compulsory attendance at a school. The term does not
1925 include the delivery of instructional service in a home setting to
1926 a dependent child who is enrolled in a public school or a charter
1927 school.

1928 This paragraph (d) applies to taxable years beginning after
1929 December 31, 2011.

1930 A taxpayer who makes an unreimbursed education expenditure
1931 during the taxpayer's taxable year is entitled to a deduction
1932 against the taxpayer's adjusted gross income in the taxable year.

1933 The amount of the deduction is Five Thousand Dollars
1934 (\$5,000.00) multiplied by the number of the taxpayer's dependent
1935 children for whom the taxpayer made education expenditures in the



1936 taxable year. A husband and wife are entitled to only one (1)
1937 deduction under this paragraph (d).

1938 To receive the deduction provided by this paragraph (d), a
1939 taxpayer must claim the deduction on the taxpayer's annual state
1940 tax return or returns in the manner prescribed by the Department
1941 of Revenue.

1942 (4) Nothing in this section shall permit the same item to be
1943 deducted more than once, either in fact or in effect.

1944 **SECTION 23.** This act shall take effect and be in force from
1945 and after July 1, 2012.

