

By: Senator(s) Hill, Tindell, Moran, Watson, Collins, Gandy, Smith, Sojourner To: Finance

SENATE BILL NO. 2941

1 AN ACT TO AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE A STATE INCOME TAX DEDUCTION FOR PARENTS WHO SEND THEIR
3 CHILDREN OR DEPENDENTS TO A PRIVATE SCHOOL OR A HOMESCHOOL
4 PROGRAM; AND FOR RELATED PURPOSES.

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

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

8 27-7-17. In computing taxable income, there shall be allowed
9 as deductions:

10 (1) **Business deductions.**

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

26 (b) **Interest.** All interest paid or accrued during the
27 taxable year on business indebtedness, except interest upon the
28 indebtedness for the purchase of tax-free bonds, or any stocks,



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

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

57 (d) **Business losses.**

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



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

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

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

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

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



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

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

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

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

121 (i) The plan or trust be irrevocable.

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



226 (p) **Contributions of human pharmaceutical products.** To
227 the extent that a "major supplier" as defined in Section
228 27-13-13(2) (d) contributes human pharmaceutical products in excess
229 of Two Hundred Fifty Million Dollars (\$250,000,000.00) as
230 determined under Section 170 of the Internal Revenue Code, the
231 charitable contribution limitation associated with those donations
232 shall follow the federal limitation but cannot result in the
233 Mississippi net income being reduced below zero.

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

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

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

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

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

247 3. Royalty, patent, technical and copyright
248 fees;

249 4. Licensing fees; and

250 5. Other similar expenses and costs.

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

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



259 acquisition, maintenance, management, ownership, sale, exchange or
260 disposition of intangible property.

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

267 (v) "Related entity" means:

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

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

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

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



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

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

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

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

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

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

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

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



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

327 (ii) The deduction for gaming losses from gaming
328 establishments;

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

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

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

338 (i) Three Thousand Four Hundred Dollars
339 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
340 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
341 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
342 in the case of married individuals filing a joint or combined
343 return;

344 (ii) One Thousand Seven Hundred Dollars
345 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
346 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
347 Three Hundred Dollars (\$2,300.00) for each calendar year
348 thereafter in the case of married individuals filing separate
349 returns;

350 (iii) Three Thousand Four Hundred Dollars
351 (\$3,400.00) in the case of a head of family; or

352 (iv) Two Thousand Three Hundred Dollars
353 (\$2,300.00) in the case of an individual who is not married.

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



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

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

368 (d) The following definitions apply throughout this
369 paragraph (d):

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

371 1. Is eligible to receive a free elementary
372 or high school education in a Mississippi Public School;

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

375 3. Is the natural or adopted child or the
376 taxpayer or, if custody of the child has been awarded in a court
377 proceeding to someone other than the mother or father, the
378 court-appointed guardian or custodian of the child.

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

382 (ii) "Education expenditure" refers to any
383 expenditures made in connection with enrollment, attendance, or
384 participation of the taxpayer's dependent child in a private
385 elementary or high school education program in Mississippi. The
386 term includes tuition, fees, computer software, textbooks,
387 workbooks, curricula, school supplies (other than personal
388 computers), and other written materials used primarily for
389 academic instruction or for academic tutoring, or both.



390 (iii) "Private elementary or high school education
391 program" means:

392 1. Homeschooling; or

393 2. Attendance at a private school;

394 in Mississippi that satisfies a child's obligation under Section
395 37-13-91 for compulsory attendance at a school. The term does not
396 include the delivery of instructional service in a home setting to
397 a dependent child who is enrolled in a public school or a charter
398 school.

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

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

404 The amount of the deduction is One Thousand Dollars
405 (\$1,000.00) multiplied by the number of the taxpayer's dependent
406 children for whom the taxpayer made education expenditures in the
407 taxable year. A husband and wife are entitled to only one (1)
408 deduction under this paragraph (d).

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

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

415 **SECTION 2.** This act shall take effect and be in force from
416 and after July 1, 2012.

