

By: Representative Calhoun

To: Ways and Means

HOUSE BILL NO. 847

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

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

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

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



22           (a) (i) Through calendar year 2017, on the first Five  
23 Thousand Dollars (\$5,000.00) of taxable income, or any part  
24 thereof, the rate shall be three percent (3%);

25           (ii) For calendar year 2018, on the first One  
26 Thousand Dollars (\$1,000.00) of taxable income there shall be no  
27 tax levied, and on the next Four Thousand Dollars (\$4,000.00) of  
28 taxable income, or any part thereof, the rate shall be three  
29 percent (3%);

30           (iii) For calendar year 2019, on the first Two  
31 Thousand Dollars (\$2,000.00) of taxable income there shall be no  
32 tax levied, and on the next Three Thousand Dollars (\$3,000.00) of  
33 taxable income, or any part thereof, the rate shall be three  
34 percent (3%);

35           (iv) For calendar year 2020, on the first Three  
36 Thousand Dollars (\$3,000.00) of taxable income there shall be no  
37 tax levied, and on the next Two Thousand Dollars (\$2,000.00) of  
38 taxable income, or any part thereof, the rate shall be three  
39 percent (3%);

40           (v) For calendar year 2021, on the first Four  
41 Thousand Dollars (\$4,000.00) of taxable income there shall be no  
42 tax levied, and on the next One Thousand Dollars (\$1,000.00) of  
43 taxable income, or any part thereof, the rate shall be three  
44 percent (3%);



45 (vi) For calendar year 2022 and all taxable years  
46 thereafter, there shall be no tax levied on the first Five  
47 Thousand Dollars (\$5,000.00) of taxable income;

48 (b) On taxable income in excess of Five Thousand  
49 Dollars (\$5,000.00) up to and including Ten Thousand Dollars  
50 (\$10,000.00), or any part thereof, the rate shall be four percent  
51 (4%); and

52 (c) On all taxable income in excess of Ten Thousand  
53 Dollars (\$10,000.00), the rate shall be five percent (5%).

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

56 (3) A like tax is hereby imposed to be assessed, collected  
57 and paid annually, except as hereinafter provided, at the rate  
58 specified in this section and as hereinafter provided, upon and  
59 with respect to the entire net income \* \* \* derived from property,  
60 activity or other sources within Mississippi, including all  
61 property owned or sold, and from every business, trade or  
62 occupation carried on in this state by individuals, corporations,  
63 partnerships, trusts or estates, not residents of the State of  
64 Mississippi.

65 (4) In the case of taxpayers having a fiscal year beginning  
66 in a calendar year with a rate in effect that is different than  
67 the rate in effect for the next calendar year and ending in the  
68 next calendar year, the tax due for that taxable year shall be  
69 determined by:



70 (a) Computing for the full fiscal year the amount of  
71 tax that would be due under the rates in effect for the calendar  
72 year in which the fiscal year begins; and

73 (b) Computing for the full fiscal year the amount of  
74 tax that would be due under the rates in effect for the calendar  
75 year in which the fiscal year ends; and

76 (c) Applying to the tax computed under paragraph (a)  
77 the ratio which the number of months falling within the earlier  
78 calendar year bears to the total number of months in the fiscal  
79 year; and

80 (d) Applying to the tax computed under paragraph (b)  
81 the ratio which the number of months falling within the later  
82 calendar year bears to the total number of months within the  
83 fiscal year; and

84 (e) Adding to the tax determined under paragraph (c)  
85 the tax determined under paragraph (d) the sum of which shall be  
86 the amount of tax due for the fiscal year.

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

89 27-7-23. (a) **Definitions.**

90 (1) "Doing business" means the operation of any  
91 business enterprise or activity that results in \* \* \* financial  
92 profit or economic gain from property, activity or other sources  
93 within Mississippi, including, but not limited to, the following:



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

96 (B) The regular maintenance in Mississippi of an  
97 inventory of merchandise or material for sale, distribution or  
98 manufacture, regardless of whether kept on the premises of the  
99 taxpayer or otherwise; or

100 (C) The \* \* \* regular sale or \* \* \* distribution  
101 of \* \* \* products or services to customers in Mississippi \* \* \*  
102 that receive the products or services in Mississippi; or

103 (D) The regular rendering of service to clients or  
104 customers in Mississippi in person or by agents \* \* \*, employees  
105 or independent contractors conducting business in Mississippi; or

106 (E) The regular solicitation of business from  
107 potential customers in Mississippi; or

108 ( \* \* \*F) The owning, renting or operating of  
109 business or income-producing property, real or personal, in  
110 Mississippi; or

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

113 ( \* \* \*H) The performing of contracts, prime or  
114 sublet work, for the construction, repair or renovation of real or  
115 personal property \* \* \*; or

116 (I) The regular performance of services outside  
117 Mississippi from which the benefits are received within  
118 Mississippi; or



119                   (J) Entering into franchising or licensing  
120 agreements, selling or otherwise disposing of franchises and  
121 licenses by a franchisor or licensor to its franchisee or licensee  
122 in Mississippi; or

123                   (K) The regular conduct of transactions with  
124 customers in Mississippi involving intangible personal property,  
125 including, but not limited to, loans or the extension of credit,  
126 resulting in receipts flowing to the nonresident or foreign  
127 taxpayer from within Mississippi.

128                   (2) "Business income" means income of any type or  
129 class, and from any activity that meets the relationship described  
130 in the transactional test or the functional test described in this  
131 paragraph (2). The classification of income by occasionally used  
132 labels, including, but not limited to, manufacturing income,  
133 compensation for services, sales income interest, dividends,  
134 rents, royalties, gains, operating income, and nonoperating income  
135 shall not be considered when determining whether income is  
136 business or nonbusiness income. All income of the taxpayer is  
137 business income unless clearly classifiable as nonbusiness income.  
138 A taxpayer seeking to overcome a classification of income as  
139 business income must establish by a preponderance of the evidence  
140 that the income has been incorrectly classified.

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



144 (i) If the transaction or activity is in the  
145 regular course of the taxpayer's trade or business, part of which  
146 trade or business is conducted within Mississippi, the resulting  
147 income of the transaction or activity is business income for  
148 Mississippi. Income may be business income even though the actual  
149 transaction or activity that gives rise to the income does not  
150 occur in Mississippi.

151 (ii) For a transaction or activity to be in  
152 the regular course of the taxpayer's trade or business, the  
153 transactions or activity need not be one that frequently occurs in  
154 the trade or business, although most frequently occurring  
155 transactions or activities shall be considered to be in the  
156 regular course of a trade or business. It is sufficient to  
157 classify a transaction or activity as being in the regular course  
158 of a trade or business if it is reasonable to conclude  
159 transactions of that type are customary in the kind of trade or  
160 business being conducted or are within the scope of what the trade  
161 or business does.

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

166 (i) Under the functional test, business  
167 income need not be derived from transactions or activities that  
168 are in the regular course of the taxpayer's own particular trade



169 or business. It shall be sufficient if the property from which  
170 the income is derived is or was an integral, functional, necessary  
171 or operative component of the taxpayer's trade or business  
172 operations \* \* \* deriving from income, property, activity or other  
173 sources within this state.

174 (ii) Income that is derived from isolated  
175 sales, leases, assignments, licenses and other infrequently  
176 occurring dispositions, transfers or transactions involving  
177 property, including transactions made in liquidation or the  
178 winding up of business is business income if the property is or  
179 was used in the taxpayer's trade or business operation. Income  
180 from the licensing of intangible assets, such as patents,  
181 copyrights, trademarks, service marks, goodwill, know-how, trade  
182 secrets and similar assets, that were developed or acquired for  
183 use by the taxpayer in his trade or business operations,  
184 constitute business income whether the licensing itself  
185 constituted the operation of a trade or business and whether the  
186 taxpayer remains in the same trade or business from or for which  
187 the intangible asset was developed or acquired.

188 (iii) Under the functional test, income from  
189 intangible property is business income when the intangible  
190 property serves an operating function, as opposed to solely an  
191 investment function. The relevant inquiry shall focus on whether  
192 the property is or was held in furtherance of the taxpayer's trade  
193 or business, that is, on the objective characteristics of the





194 intangible property's use or acquisition and its relation to the  
195 taxpayer and the taxpayer's activities. The functional test is  
196 not satisfied where the holding of the property is limited solely  
197 to an investment function as in the case where the holding of the  
198 property is limited to mere financial betterment of the taxpayer  
199 in general.

200 (iv) If the property is or was held in  
201 furtherance of the taxpayer's trade or business beyond mere  
202 financial betterment, then income from the property may be  
203 business income even though the actual transaction or activity  
204 involving the property that gives rise to the income does not  
205 occur in Mississippi.

206 (v) If, with respect to an item of property,  
207 a taxpayer takes a deduction from business income that is  
208 apportioned to Mississippi, or includes that item of property in  
209 the property factor, it is presumed that the item of property is  
210 or was integral to the taxpayer's trade or business operations.  
211 No presumption arises from the absence of any of this action.

212 (vi) Application of the functional test is  
213 generally unaffected by the form of the property. Income arising  
214 from intangible property is business income when the intangible  
215 property itself or the underlying value of the intangible property  
216 is or was an integral, functional, necessary or operative  
217 component to the taxpayer's trade or business operation.

218 Therefore, while treatment of income derived from transactions



219 involving intangible property as business income may be supported  
220 by a finding that the issuer of the intangible property and the  
221 taxpayer are engaged in the same trade or business, establishment  
222 of such a relationship is not the exclusive basis for concluding  
223 that the income constitutes business income. It is sufficient to  
224 support a finding of business income if the holding of the  
225 intangible property served an operational rather than an  
226 investment function.

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

229 (4) "Commercial domicile" means the principal place  
230 from which the trade or business of the taxpayer is directed or  
231 managed.

232 (5) "State" means any state of the United States, the  
233 District of Columbia, the Commonwealth of Puerto Rico, any  
234 territory or possession of the United States, and any foreign  
235 country or political subdivision thereof.

236 (b) **Nonresident individuals, partnerships, trusts and**  
237 **estates.**

238 (1) The tax imposed by this article shall apply to the  
239 entire net income of a taxable nonresident derived from  
240 employment, trade, business, professional \* \* \* service or  
241 personal service in Mississippi, or \* \* \* otherwise doing business  
242 in Mississippi as defined in subsection (a)(1) of this section,  
243 including the rental of real or personal property located within



244 this state or for use herein and including the sale or exchange or  
245 other disposition of tangible or intangible property having a  
246 situs in Mississippi.

247 (2) Income derived from trade, business or other  
248 commercial activity shall be taxed to the extent that it is  
249 derived from \* \* \* property, activity or other sources within this  
250 state. Mississippi net income shall be determined in the manner  
251 prescribed by the commissioner for the allocation and/or  
252 apportionment of income of foreign corporations having income from  
253 sources both within and without the state.

254 (3) A taxable nonresident shall be allowed to deduct  
255 expenses, interest, taxes, losses, bad debts, depreciation and  
256 similar business expenses only to the extent that they are  
257 allowable under this article and are attributable to the  
258 production of income allocable to and taxable by the State of  
259 Mississippi. As to allowable deductions essentially personal in  
260 nature, such as contributions to charitable organizations, medical  
261 expenses, taxes, interest and the optional standard deduction,  
262 such taxable nonresident shall be allowed deductions therefor in  
263 the ratio that the net income from sources within Mississippi  
264 bears to the total net income from all sources of such taxable  
265 nonresident, computed as if such taxable nonresident was a  
266 resident of Mississippi.

267 (c) **Foreign corporations, associations, organizations and**  
268 **other entities.**



269           (1) Corporations and organizations required to file.  
270 All foreign corporations and other organizations which have  
271 obtained a certificate of authority from the Secretary of State to  
272 do business in Mississippi, or corporations or organizations which  
273 are in fact doing business in Mississippi, are subject to the  
274 income tax levy and are required to file annual income tax returns  
275 unless the corporation or organization is specifically exempt from  
276 tax by this article.

277           (2) Allocation and apportionment of income.

278           (A) Except as provided in Sections 27-7-24,  
279 27-7-24.1, 27-7-24.3, 27-7-24.5, 27-7-24.7 and 27-7-24.8,  
280 Mississippi Code of 1972, any corporation or organization having  
281 business income from business activity which is taxable both  
282 within and without this state shall allocate and apportion its net  
283 business income as prescribed by regulations enacted by the  
284 commissioner. Income from services shall be apportioned to the  
285 state where the benefits of the service are received. If the  
286 business income of the corporation is derived solely from property  
287 owned \* \* \*, business done or services performed in this state and  
288 the corporation is not taxable in another state, the entire  
289 business income shall be allocated to this state. A corporation  
290 is taxable in another state if, in that state the corporation is  
291 subject to a net income tax, or a franchise tax measured by net  
292 income, or if that state has jurisdiction to subject the



293 corporation to a net income tax regardless of whether the state  
294 does or does not subject the corporation to a net income tax.

295 (B) If the allocation and apportionment provisions  
296 of this section or regulations enacted by the commissioner do not  
297 fairly represent the extent of the taxpayer's business activity in  
298 this state, the taxpayer may petition for, or the commissioner may  
299 require, in respect to all or any part of the taxpayer's business  
300 activity, if reasonable:

301 (i) Separate accounting;

302 (ii) The exclusion of any one or more of the  
303 factors;

304 (iii) The inclusion of one or more additional  
305 factors which will fairly represent the taxpayer's business  
306 activity in this state; or

307 (iv) The employment of any other method to  
308 effectuate an equitable allocation and apportionment of the  
309 taxpayer's income.

310 (C) In any instance in which a taxpayer requests  
311 or the commissioner requires the use of any of the alternative  
312 apportionment methods in subparagraph (B) of this paragraph, the  
313 party requesting or requiring the method shall bear the burden of  
314 proving by preponderance of the evidence in any administrative or  
315 judicial proceeding that the methods set forth in this section or  
316 the commissioner's regulations do not fairly represent the extent  
317 of the taxpayer's business activity in this state and that the



318 proposed method more fairly represents that activity than any  
319 other reasonable method available. The alternative apportionment  
320 authority specified in this subparagraph (D) is intended to be  
321 invoked only in limited and unique, nonrecurring circumstances  
322 where the standard apportionment provisions contained in the  
323 statutes and regulations produce unanticipated results that do not  
324 fairly represent the extent of the taxpayer's business activity in  
325 this state.

326 (D) The commissioner shall be prohibited from  
327 assessing any penalties related to a deficiency arising from  
328 requiring the use of an alternative apportionment method under  
329 subparagraph (B) of this paragraph unless the commissioner shall  
330 establish by preponderance of the evidence that the taxpayer's  
331 method was without reasonable basis or was not in accordance with  
332 existing statutes or regulations.

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

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

339 (B) Net rents and royalties from tangible personal  
340 property are allocable to the state in which the property is used,  
341 or to this state in their entirety if the corporation's commercial  
342 domicile is in this state and the corporation is not organized



343 under the laws of or taxable in the state in which the property is  
344 utilized.

345 (C) Capital gains and losses from sales of real  
346 property are allocable to the state in which the property is  
347 located.

348 (D) Capital gains and losses from sales of  
349 tangible personal property are allocable to the state in which the  
350 property is located, or to this state if the corporation's  
351 commercial domicile is in this state and the corporation is not  
352 taxable in the state in which the property had a situs.

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

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

358 (G) Patent and copyright royalties are allocable  
359 to the state in which the patent or copyright is utilized by the  
360 payer, or to this state if and to the extent that the patent or  
361 copyright is utilized by the payer in a state in which the  
362 corporation is not taxable and the corporation's commercial  
363 domicile is in this state.

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

366 (I) All expenses connected with earning  
367 nonbusiness income, such as interest, taxes, general and



368 administrative expenses and such other expenses relating to the  
369 production of nonbusiness income, shall be deducted from gross  
370 nonbusiness income. Nonbusiness interest expense shall be  
371 computed by using the ratio of nonbusiness assets to total assets  
372 applied to total interest expense.

373 (d) **Foreign lenders.**

374 (1) In the case of any foreign lender, (corporation,  
375 association, organization, individual, partnership, trusts or  
376 estates), other than: (A) a foreign insurance company subject to  
377 certification by the Commissioner of Insurance, as provided by  
378 Section 83-21-1 et seq.; or (B) a foreign lender qualified under  
379 the general laws of this state to do business herein; or (C) a  
380 foreign lender which maintains an office or place of business  
381 within this state; or (D) lenders that sold properties in this  
382 state and financed such sale and reported on the installment  
383 method, interest income received or accrued on or after January 1,  
384 1977, from loans secured by real estate or from lending on the  
385 security of real estate located within this state shall be  
386 excluded from Mississippi gross income and exempt from the  
387 Mississippi income tax levy and the reporting requirements.

388 (2) In the case of any foreign lender exempted in  
389 paragraph (1) of this subsection, interest income received on any  
390 loan finalized or consummated after January 1, 1977, shall be  
391 excluded from Mississippi gross income and the net profits derived





392 therefrom shall be exempt from the Mississippi income tax levy for  
393 the life of such loan.

394 (e) **Insurance companies.** Insurance companies, other than  
395 life insurance companies, deriving premium income from within and  
396 without the state, may determine their Mississippi net income from  
397 underwriting by apportioning to this state a part of their total  
398 net underwriting income by such processes or formulas of general  
399 apportionment as are prescribed by the commissioner; provided that  
400 a company adopting this method of reporting for any year must  
401 adhere to said method of reporting for subsequent years, unless  
402 permission is granted by the commissioner to change to a different  
403 method of reporting; and provided that all affiliated companies of  
404 the same group shall use the same method of reporting.

405 (f) **Bond requirements.** Any individual or corporation  
406 subject to the tax imposed by this article, engaged in the  
407 business of performing contracts which may require the payment of  
408 net income taxes, may be required by the commissioner, before  
409 entering into the performance of any contract or contracts the  
410 consideration of which is more than Ten Thousand Dollars  
411 (\$10,000.00), to execute and file a good and valid bond with a  
412 surety company authorized to do business in this state, or with  
413 sufficient sureties to be approved by the commissioner,  
414 conditioned that all taxes which may accrue to the State of  
415 Mississippi will be paid when due. Provided, however, that such  
416 bond shall not exceed five percent (5%) of the total contracts



417 entered into during the taxable period, and, provided further,  
418 that any taxpayer, in lieu of furnishing such bond, may pay the  
419 maximum sum required herein as advance payment of taxes due on the  
420 net income realized from any contract or contracts performed or  
421 completed in this state.

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

424             27-7-17. In computing taxable income, there shall be allowed  
425 as deductions:

426             (1) **Business deductions.**

427                 (a) **Business expenses.** All the ordinary and necessary  
428 expenses paid or incurred during the taxable year in carrying on  
429 any trade or business, including a reasonable allowance for  
430 salaries or other compensation for personal services actually  
431 rendered; nonreimbursable traveling expenses incident to current  
432 employment, including a reasonable amount expended for meals and  
433 lodging while away from home in the pursuit of a trade or  
434 business; and rentals or other payments required to be made as a  
435 condition of the continued use or possession, for purposes of the  
436 trade or business of property to which the taxpayer has not taken  
437 or is not taking title or in which he had no equity. Expense  
438 incurred in connection with earning and distributing nontaxable  
439 income is not an allowable deduction. Limitations on  
440 entertainment expenses shall conform to the provisions of the  
441 Internal Revenue Code of 1986.



442           (b) **Interest.** All interest paid or accrued during the  
443 taxable year on business indebtedness, except interest upon the  
444 indebtedness for the purchase of tax-free bonds, or any stocks,  
445 the dividends from which are nontaxable under the provisions of  
446 this article; provided, however, in the case of securities  
447 dealers, interest payments or accruals on loans, the proceeds of  
448 which are used to purchase tax-exempt securities, shall be  
449 deductible if income from otherwise tax-free securities is  
450 reported as income. Investment interest expense shall be limited  
451 to investment income. Interest expense incurred for the purchase  
452 of treasury stock, to pay dividends, or incurred as a result of an  
453 undercapitalized affiliated corporation may not be deducted unless  
454 an ordinary and necessary business purpose can be established to  
455 the satisfaction of the commissioner. For the purposes of this  
456 paragraph, the phrase "interest upon the indebtedness for the  
457 purchase of tax-free bonds" applies only to the indebtedness  
458 incurred for the purpose of directly purchasing tax-free bonds and  
459 does not apply to any other indebtedness incurred in the regular  
460 course of the taxpayer's business. Any corporation, association,  
461 organization or other entity taxable under Section 27-7-23(c)  
462 shall allocate interest expense as provided in Section  
463 27-7-23(c) (3) (I).

464           (c) **Taxes.** Taxes paid or accrued within the taxable  
465 year, except state and federal income taxes, excise taxes based on  
466 or measured by net income, estate and inheritance taxes, gift



467 taxes, cigar and cigarette taxes, gasoline taxes, and sales and  
468 use taxes unless incurred as an item of expense in a trade or  
469 business or in the production of taxable income. In the case of  
470 an individual, taxes permitted as an itemized deduction under the  
471 provisions of subsection (3)(a) of this section are to be claimed  
472 thereunder.

473 (d) **Business losses.**

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

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

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

486 (f) **Depreciation.** A reasonable allowance for  
487 exhaustion, wear and tear of property used in the trade or  
488 business, or rental property, and depreciation upon buildings  
489 based upon their reasonable value as of March 16, 1912, if  
490 acquired prior thereto, and upon cost if acquired subsequent to  
491 that date.



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

499           (h) **Contributions or gifts.** Except as otherwise  
500 provided in paragraph (p) of this subsection or subsection (3) (a)  
501 of this section for individuals, contributions or gifts made by  
502 corporations within the taxable year to corporations,  
503 organizations, associations or institutions, including Community  
504 Chest funds, foundations and trusts created solely and exclusively  
505 for religious, charitable, scientific or educational purposes, or  
506 for the prevention of cruelty to children or animals, no part of  
507 the net earnings of which inure to the benefit of any private  
508 stockholder or individual. This deduction shall be allowed in an  
509 amount not to exceed twenty percent (20%) of the net income. Such  
510 contributions or gifts shall be allowable as deductions only if  
511 verified under rules and regulations prescribed by the  
512 commissioner, with the approval of the Governor. Contributions  
513 made in any form other than cash shall be allowed as a deduction,  
514 subject to the limitations herein provided, in an amount equal to  
515 the actual market value of the contributions at the time the  
516 contribution is actually made and consummated.



517           (i) **Reserve funds - insurance companies.** In the case  
518 of insurance companies the net additions required by law to be  
519 made within the taxable year to reserve funds when such reserve  
520 funds are maintained for the purpose of liquidating policies at  
521 maturity.

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

525           (k) **Contributions to employee pension plans.**  
526 Contributions made by an employer to a plan or a trust forming  
527 part of a pension plan, stock bonus plan, disability or  
528 death-benefit plan, or profit-sharing plan of such employer for  
529 the exclusive benefit of some or all of his, their, or its  
530 employees, or their beneficiaries, shall be deductible from his,  
531 their, or its income only to the extent that, and for the taxable  
532 year in which, the contribution is deductible for federal income  
533 tax purposes under the Internal Revenue Code of 1986 and any other  
534 provisions of similar purport in the Internal Revenue Laws of the  
535 United States, and the rules, regulations, rulings and  
536 determinations promulgated thereunder, provided that:

537                   (i) The plan or trust be irrevocable.

538                   (ii) The plan or trust constitute a part of a  
539 pension plan, stock bonus plan, disability or death-benefit plan,  
540 or profit-sharing plan for the exclusive benefit of some or all of  
541 the employer's employees and/or officers, or their beneficiaries,



542 for the purpose of distributing the corpus and income of the plan  
543 or trust to such employees and/or officers, or their  
544 beneficiaries.

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

548 Contributions to all plans or to all trusts of real or  
549 personal property (or real and personal property combined) or to  
550 insured plans created under a retirement plan for which provision  
551 has been made under the laws of the United States of America,  
552 making such contributions deductible from income for federal  
553 income tax purposes, shall be deductible only to the same extent  
554 under the Income Tax Laws of the State of Mississippi.

555 (1) **Net operating loss carrybacks and carryovers.** A  
556 net operating loss for any taxable year ending after December 31,  
557 1993, and taxable years thereafter, shall be a net operating loss  
558 carryback to each of the three (3) taxable years preceding the  
559 taxable year of the loss. If the net operating loss for any  
560 taxable year is not exhausted by carrybacks to the three (3)  
561 taxable years preceding the taxable year of the loss, then there  
562 shall be a net operating loss carryover to each of the fifteen  
563 (15) taxable years following the taxable year of the loss  
564 beginning with any taxable year after December 31, 1991.

565 For any taxable year ending after December 31, 1997, the  
566 period for net operating loss carrybacks and net operating loss



567 carryovers shall be the same as those established by the Internal  
568 Revenue Code and the rules, regulations, rulings and  
569 determinations promulgated thereunder as in effect at the taxable  
570 year end or on December 31, 2000, whichever is earlier.

571 A net operating loss for any taxable year ending after  
572 December 31, 2001, and taxable years thereafter, shall be a net  
573 operating loss carryback to each of the two (2) taxable years  
574 preceding the taxable year of the loss. If the net operating loss  
575 for any taxable year is not exhausted by carrybacks to the two (2)  
576 taxable years preceding the taxable year of the loss, then there  
577 shall be a net operating loss carryover to each of the twenty (20)  
578 taxable years following the taxable year of the loss beginning  
579 with any taxable year after the taxable year of the loss.

580 The term "net operating loss," for the purposes of this  
581 paragraph, shall be the excess of the deductions allowed over the  
582 gross income; provided, however, the following deductions shall  
583 not be allowed in computing same:

584 (i) No net operating loss deduction shall be  
585 allowed.

586 (ii) No personal exemption deduction shall be  
587 allowed.

588 (iii) Allowable deductions which are not  
589 attributable to taxpayer's trade or business shall be allowed only  
590 to the extent of the amount of gross income not derived from such  
591 trade or business.





592 Any taxpayer entitled to a carryback period as provided by  
593 this paragraph may elect to relinquish the entire carryback period  
594 with respect to a net operating loss for any taxable year ending  
595 after December 31, 1991. The election shall be made in the manner  
596 prescribed by the Department of Revenue and shall be made by the  
597 due date, including extensions of time, for filing the taxpayer's  
598 return for the taxable year of the net operating loss for which  
599 the election is to be in effect. The election, once made for any  
600 taxable year, shall be irrevocable for that taxable year.

601 (m) **Amortization of pollution or environmental control**  
602 **facilities.** Allowance of deduction. Every taxpayer, at his  
603 election, shall be entitled to a deduction for pollution or  
604 environmental control facilities to the same extent as that  
605 allowed under the Internal Revenue Code and the rules,  
606 regulations, rulings and determinations promulgated thereunder.

607 (n) **Dividend distributions - real estate investment**  
608 **trusts.** "Real estate investment trust" (hereinafter referred to  
609 as REIT) shall have the meaning ascribed to such term in Section  
610 856 of the federal Internal Revenue Code of 1986, as amended. A  
611 REIT is allowed a dividend distributed deduction if the dividend  
612 distributions meet the requirements of Section 857 or are  
613 otherwise deductible under Section 858 or 860, federal Internal  
614 Revenue Code of 1986, as amended. In addition:

615 (i) A dividend distributed deduction shall only be  
616 allowed for dividends paid by a publicly traded REIT. A qualified



617 REIT subsidiary shall be allowed a dividend distributed deduction  
618 if its owner is a publicly traded REIT.

619 (ii) Income generated from real estate contributed  
620 or sold to a REIT by a shareholder or related party shall not give  
621 rise to a dividend distributed deduction, unless the shareholder  
622 or related party would have received the dividend distributed  
623 deduction under this chapter.

624 (iii) A holding corporation receiving a dividend  
625 from a REIT shall not be allowed the deduction in Section  
626 27-7-15(4)(t).

627 (iv) Any REIT not allowed the dividend distributed  
628 deduction in the federal Internal Revenue Code of 1986, as  
629 amended, shall not be allowed a dividend distributed deduction  
630 under this chapter.

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

635 (o) **Contributions to college savings trust fund**  
636 **accounts.** Contributions or payments to a Mississippi Affordable  
637 College Savings Program account are deductible as provided under  
638 Section 37-155-113. Payments made under a prepaid tuition  
639 contract entered into under the Mississippi Prepaid Affordable  
640 College Tuition Program are deductible as provided under Section  
641 37-155-17.



642                   (p) **Contributions of human pharmaceutical products.** To  
643 the extent that a "major supplier" as defined in Section  
644 27-13-13(2) (d) contributes human pharmaceutical products in excess  
645 of Two Hundred Fifty Million Dollars (\$250,000,000.00) as  
646 determined under Section 170 of the Internal Revenue Code, the  
647 charitable contribution limitation associated with those donations  
648 shall follow the federal limitation but cannot result in the  
649 Mississippi net income being reduced below zero.

650                   (q) **Contributions to ABLE trust fund accounts.**  
651 Contributions or payments to a Mississippi Achieving a Better Life  
652 Experience (ABLE) Program account are deductible as provided under  
653 Section 43-28-13.

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

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

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

658                                 1. Expenses, losses and costs for, related  
659 to, or in connection directly or indirectly with the direct or  
660 indirect acquisition, use, maintenance or management, ownership,  
661 sale, exchange or any other disposition of intangible property to  
662 the extent such amounts are allowed as deductions or costs in  
663 determining taxable income under this chapter;

664                                 2. Expenses or losses related to or incurred  
665 in connection directly or indirectly with factoring transactions  
666 or discounting transactions;



667                   3. Royalty, patent, technical and copyright  
668 fees;

669                   4. Licensing fees; and

670                   5. Other similar expenses and costs.

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

674                   (iii) "Interest expenses and cost" means amounts  
675 directly or indirectly allowed as deductions for purposes of  
676 determining taxable income under this chapter to the extent such  
677 interest expenses and costs are directly or indirectly for,  
678 related to, or in connection with the direct or indirect  
679 acquisition, maintenance, management, ownership, sale, exchange or  
680 disposition of intangible property.

681                   (iv) "Related member" means an entity or person  
682 that, with respect to the taxpayer during all or any portion of  
683 the taxable year, is a related entity, a component member as  
684 defined in the Internal Revenue Code, or is an entity or a person  
685 to or from whom there is attribution of stock ownership in  
686 accordance with Section 1563(e) of the Internal Revenue Code.

687                   (v) "Related entity" means:

688                   1. A stockholder who is an individual or a  
689 member of the stockholder's family, as defined in regulations  
690 prescribed by the commissioner, if the stockholder and the members  
691 of the stockholder's family own, directly, indirectly,



692 beneficially or constructively, in the aggregate, at least fifty  
693 percent (50%) of the value of the taxpayer's outstanding stock;

694           2. A stockholder, or a stockholder's  
695 partnership, limited liability company, estate, trust or  
696 corporation, if the stockholder and the stockholder's  
697 partnerships, limited liability companies, estates, trusts and  
698 corporations own, directly, indirectly, beneficially or  
699 constructively, in the aggregate, at least fifty percent (50%) of  
700 the value of the taxpayer's outstanding stock;

701           3. A corporation, or a party related to the  
702 corporation in a manner that would require an attribution of stock  
703 from the corporation to the party or from the party to the  
704 corporation, if the taxpayer owns, directly, indirectly,  
705 beneficially or constructively, at least fifty percent (50%) of  
706 the value of the corporation's outstanding stock under regulation  
707 prescribed by the commissioner;

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

711           (vi) "Valid business purpose" means one or more  
712 business purposes that alone or in combination constitute the  
713 motivation for some business activity or transaction, which  
714 activity or transaction improves, apart from tax effects, the  
715 economic position of the taxpayer, as further defined by  
716 regulation.



717 (b) In computing net income, a taxpayer shall add back  
718 otherwise deductible interest expenses and costs and intangible  
719 expenses and costs directly or indirectly paid, accrued to or  
720 incurred, in connection directly or indirectly with one or more  
721 direct or indirect transactions with one or more related members.

722 (c) The adjustments required by this subsection shall  
723 not apply to such portion of interest expenses and costs and  
724 intangible expenses and costs that the taxpayer can establish  
725 meets one (1) of the following:

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

729 (ii) \* \* \* The transaction giving rise to the  
730 interest expenses and costs or intangible expenses and costs must  
731 have a valid business purpose and economic substance and contain  
732 terms and conditions comparable to a similar arms-length  
733 transaction between unrelated parties. Tax avoidance must not be  
734 a significant motivation of entering into the transaction. The  
735 related member involved in the transaction must not be primarily  
736 engaged in the acquisition, use, maintenance or management,  
737 ownership, sale, exchange or any other disposition of intangible  
738 property. If the development, purchase of or other costs related  
739 to the intangible property giving rise to the payment were shared  
740 in any way by the party making the payment, the party making the  
741 payment must have been compensated at a fair market, arms-length



742 price for such costs. If the party making the payment was not so  
743 compensated, the interest expenses and costs or intangible  
744 expenses and costs are not deductible.

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

749 (e) The commissioner may prescribe such regulations as  
750 necessary or appropriate to carry out the purposes of this  
751 subsection, including, but not limited to, clarifying definitions  
752 of terms, rules of stock attribution, factoring and discount  
753 transactions.

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

755 (a) The amount allowable for individual nonbusiness  
756 itemized deductions for federal income tax purposes where the  
757 individual is eligible to elect, for the taxable year, to itemize  
758 deductions on his federal return except the following:

759 (i) The deduction for state income taxes paid or  
760 other taxes allowed for federal purposes in lieu of state income  
761 taxes paid;

762 (ii) The deduction for gaming losses from gaming  
763 establishments;

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



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

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

773 (i) Three Thousand Four Hundred Dollars  
774 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred  
775 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand  
776 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter  
777 in the case of married individuals filing a joint or combined  
778 return;

779 (ii) One Thousand Seven Hundred Dollars  
780 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred  
781 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand  
782 Three Hundred Dollars (\$2,300.00) for each calendar year  
783 thereafter in the case of married individuals filing separate  
784 returns;

785 (iii) Three Thousand Four Hundred Dollars  
786 (\$3,400.00) in the case of a head of family; or

787 (iv) Two Thousand Three Hundred Dollars  
788 (\$2,300.00) in the case of an individual who is not married.

789 In the case of a husband and wife living together, having  
790 separate incomes, and filing combined returns, the standard





791 deduction authorized may be divided in any manner they choose. In  
792 the case of separate returns by a husband and wife, the standard  
793 deduction shall not be allowed to either if the taxable income of  
794 one of the spouses is determined without regard to the standard  
795 deduction.

796 (c) A nonresident individual shall be allowed the same  
797 individual nonbusiness deductions as are authorized for resident  
798 individuals in paragraph (a) or (b) of this subsection; however,  
799 the nonresident individual is entitled only to that proportion of  
800 the individual nonbusiness deductions as his net income from  
801 sources within the State of Mississippi bears to his total or  
802 entire net income from all sources.

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

805 **SECTION 4.** This act shall take effect and be in force from  
806 and after January 1, 2018.

