

By: Representative Dortch

To: Ways and Means

## HOUSE BILL NO. 543

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%);



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

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

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

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

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

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



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

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

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

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

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

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

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

(1) "Doing business" means the operation of any business enterprise or activity that results in \* \* \* financial profit or economic gain from property, activity or other sources 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



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

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

(iii) Under the functional test, income from intangible property is business income when the intangible property serves an operating function, as opposed to solely an investment function. The relevant inquiry shall focus on whether the property is or was held in furtherance of the taxpayer's trade 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, 27-7-24.8 and  
280 27-7-24.9, Mississippi Code of 1972, any corporation or  
281 organization having business income from business activity which  
282 is taxable both within and without this state shall allocate and  
283 apportion its net business income as prescribed by regulations  
284 enacted by the commissioner. Income from services shall be  
285 apportioned to the state where the benefits of the service are  
286 received. If the business income of the corporation is derived  
287 solely from property owned \* \* \*, business done or services  
288 performed in this state and the corporation is not taxable in  
289 another state, the entire business income shall be allocated to  
290 this state. A corporation is taxable in another state if, in that  
291 state the corporation is subject to a net income tax, or a  
292 franchise tax measured by net income, or if that state has  
293 jurisdiction to subject the corporation to a net income tax



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

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

(i) Separate accounting;

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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

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



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

374 (d) **Foreign lenders.**

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

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



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

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

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



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

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

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

(1) **Business deductions.**

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



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

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



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

(d) **Business losses.**

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

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

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

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



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

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



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

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

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

538                   (i) The plan or trust be irrevocable.

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

625 (iii) A holding corporation receiving a dividend  
626 from a REIT shall not be allowed the deduction in Section  
627 27-7-15(4) (t).

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

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

636 (o) **Contributions to college savings trust fund**  
637 **accounts.** Contributions or payments to a Mississippi Affordable  
638 College Savings Program account are deductible as provided under  
639 Section 37-155-113. Payments made under a prepaid tuition  
640 contract entered into under the Mississippi Prepaid Affordable  
641 College Tuition Program are deductible as provided under Section  
642 37-155-17.



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

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

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

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

(i) "Intangible expenses and costs" include:

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

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



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

670 4. Licensing fees; and

671 5. Other similar expenses and costs.

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

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

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

688 (v) "Related entity" means:

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



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

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

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

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

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



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

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

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

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



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

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

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

(3) **Individual nonbusiness deductions.**

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

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

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

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



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

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

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

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

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

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

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



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

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

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

806 **SECTION 4.** This act shall take effect and be in force from  
807 and after January 1, 2020.

