

By: Representatives Lamar, Deweese,
Steverson

To: Ways and Means

HOUSE BILL NO. 1356
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT FOR THE STATE INCOME TAX DEDUCTION AUTHORIZED FOR
3 DEPRECIATION, IN THE CASE OF NEW OR USED AIRCRAFT, EQUIPMENT,
4 ENGINES, OR OTHER PARTS AND TOOLS USED FOR AVIATION, THE ALLOWANCE
5 FOR BONUS DEPRECIATION CONFORMS WITH THE FEDERAL BONUS
6 DEPRECIATION RATES AND REASONABLE ALLOWANCE FOR DEPRECIATION IS NO
7 LESS THAN ONE HUNDRED PERCENT; AND FOR RELATED PURPOSES.

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

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

11 27-7-17. In computing taxable income, there shall be allowed
12 as deductions:

13 (1) **Business deductions.**

14 (a) **Business expenses.** All the ordinary and necessary
15 expenses paid or incurred during the taxable year in carrying on
16 any trade or business, including a reasonable allowance for
17 salaries or other compensation for personal services actually
18 rendered; nonreimbursable traveling expenses incident to current
19 employment, including a reasonable amount expended for meals and
20 lodging while away from home in the pursuit of a trade or



21 business; and rentals or other payments required to be made as a
22 condition of the continued use or possession, for purposes of the
23 trade or business of property to which the taxpayer has not taken
24 or is not taking title or in which he had no equity. Expense
25 incurred in connection with earning and distributing nontaxable
26 income is not an allowable deduction. Limitations on
27 entertainment expenses shall conform to the provisions of the
28 Internal Revenue Code of 1986.

29 (b) **Interest.** All interest paid or accrued during the
30 taxable year on business indebtedness, except interest upon the
31 indebtedness for the purchase of tax-free bonds, or any stocks,
32 the dividends from which are nontaxable under the provisions of
33 this article; provided, however, in the case of securities
34 dealers, interest payments or accruals on loans, the proceeds of
35 which are used to purchase tax-exempt securities, shall be
36 deductible if income from otherwise tax-free securities is
37 reported as income. Investment interest expense shall be limited
38 to investment income. Interest expense incurred for the purchase
39 of treasury stock, to pay dividends, or incurred as a result of an
40 undercapitalized affiliated corporation may not be deducted unless
41 an ordinary and necessary business purpose can be established to
42 the satisfaction of the commissioner. For the purposes of this
43 paragraph, the phrase "interest upon the indebtedness for the
44 purchase of tax-free bonds" applies only to the indebtedness
45 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. In the case of new or used aircraft, equipment, engines, or other parts and tools used for aviation, allowance for bonus depreciation conforms with the federal bonus depreciation rates and reasonable allowance for depreciation under this section is no less than one hundred percent (100%).

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

(h) **Contributions or gifts.** Except as otherwise provided in paragraph (p) of this subsection or subsection (3)(a) of this section for individuals, contributions or gifts made by corporations within the taxable year to corporations, organizations, associations or institutions, including Community Chest funds, foundations and trusts created solely and exclusively



96 for religious, charitable, scientific or educational purposes, or
97 for the prevention of cruelty to children or animals, no part of
98 the net earnings of which inure to the benefit of any private
99 stockholder or individual. This deduction shall be allowed in an
100 amount not to exceed twenty percent (20%) of the net income. Such
101 contributions or gifts shall be allowable as deductions only if
102 verified under rules and regulations prescribed by the
103 commissioner, with the approval of the Governor. Contributions
104 made in any form other than cash shall be allowed as a deduction,
105 subject to the limitations herein provided, in an amount equal to
106 the actual market value of the contributions at the time the
107 contribution is actually made and consummated.

108 (i) **Reserve funds - insurance companies.** In the case
109 of insurance companies the net additions required by law to be
110 made within the taxable year to reserve funds when such reserve
111 funds are maintained for the purpose of liquidating policies at
112 maturity.

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

116 (k) **Contributions to employee pension plans.**
117 Contributions made by an employer to a plan or a trust forming
118 part of a pension plan, stock bonus plan, disability or
119 death-benefit plan, or profit-sharing plan of such employer for
120 the exclusive benefit of some or all of his, their, or its



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

(i) The plan or trust be irrevocable.

(ii) The plan or trust constitute a part of a pension plan, stock bonus plan, disability or death-benefit plan, or profit-sharing plan for the exclusive benefit of some or all of 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 carryovers shall be the same as those established by the Internal Revenue Code and the rules, regulations, rulings and determinations promulgated thereunder as in effect at the taxable year end or on December 31, 2000, whichever is earlier.

A net operating loss for any taxable year ending after December 31, 2001, and taxable years thereafter, shall be a net operating loss carryback to each of the two (2) 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 two (2) taxable years preceding the taxable year of the loss, then there shall be a net operating loss carryover to each of the twenty (20) taxable years following the taxable year of the loss beginning with any taxable year after the taxable year of the loss.



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

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

(ii) No personal exemption deduction shall be allowed.

(iii) Allowable deductions which are not attributable to taxpayer's trade or business shall be allowed only to the extent of the amount of gross income not derived from such 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 REIT subsidiary shall be allowed a dividend distributed deduction if its owner is a publicly traded REIT.

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

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

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



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

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

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



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

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

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

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

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

258 3. Royalty, patent, technical and copyright
259 fees;

260 4. Licensing fees; and

261 5. Other similar expenses and costs.

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

265 (iii) "Interest expenses and cost" means amounts
266 directly or indirectly allowed as deductions for purposes of
267 determining taxable income under this chapter to the extent such
268 interest expenses and costs are directly or indirectly for,
269 related to, or in connection with the direct or indirect



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

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

(v) "Related entity" means:

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

(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 between the taxpayer and related member was done primarily for a valid business purpose other than the avoidance of taxes, and the related member is not primarily engaged in the acquisition, use,



319 maintenance or management, ownership, sale, exchange or any other
320 disposition of intangible property.

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

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

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

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

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

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

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

342 (iv) The deduction for taxes collected by gaming
343 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 deduction authorized may be divided in any manner they choose. In the case of separate returns by a husband and wife, the standard



deduction shall not be allowed to either if the taxable income of one of the spouses is determined without regard to the standard deduction.

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

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

SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.



394 **SECTION 3.** This act shall take effect and be in force from
395 and after July 1, 2021.

