

Senate Amendments to House Bill No. 1356

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

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

14 (1) **Business deductions.**

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

27 income is not an allowable deduction. Limitations on
28 entertainment expenses shall conform to the provisions of the
29 Internal Revenue Code of 1986.

30 (b) **Interest.** All interest paid or accrued during the
31 taxable year on business indebtedness, except interest upon the
32 indebtedness for the purchase of tax-free bonds, or any stocks,
33 the dividends from which are nontaxable under the provisions of
34 this article; provided, however, in the case of securities
35 dealers, interest payments or accruals on loans, the proceeds of
36 which are used to purchase tax-exempt securities, shall be
37 deductible if income from otherwise tax-free securities is
38 reported as income. Investment interest expense shall be limited
39 to investment income. Interest expense incurred for the purchase
40 of treasury stock, to pay dividends, or incurred as a result of an
41 undercapitalized affiliated corporation may not be deducted unless
42 an ordinary and necessary business purpose can be established to
43 the satisfaction of the commissioner. For the purposes of this
44 paragraph, the phrase "interest upon the indebtedness for the
45 purchase of tax-free bonds" applies only to the indebtedness
46 incurred for the purpose of directly purchasing tax-free bonds and
47 does not apply to any other indebtedness incurred in the regular
48 course of the taxpayer's business. Any corporation, association,
49 organization or other entity taxable under Section 27-7-23(c)
50 shall allocate interest expense as provided in Section
51 27-7-23(c) (3) (I).

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

61 (d) **Business losses.**

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

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

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

74 (f) **Depreciation.** A reasonable allowance for
75 exhaustion, wear and tear of property used in the trade or
76 business, or rental property, and depreciation upon buildings
77 based upon their reasonable value as of March 16, 1912, if

78 acquired prior thereto, and upon cost if acquired subsequent to
79 that date. In the case of new or used aircraft, equipment,
80 engines, or other parts and tools used for aviation and
81 manufacturing, allowance for bonus depreciation conforms with the
82 federal bonus depreciation rates and reasonable allowance for
83 depreciation under this section is no less than one hundred
84 percent (100%).

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

92 (h) **Contributions or gifts.** Except as otherwise
93 provided in paragraph (p) of this subsection or subsection (3)(a)
94 of this section for individuals, contributions or gifts made by
95 corporations within the taxable year to corporations,
96 organizations, associations or institutions, including Community
97 Chest funds, foundations and trusts created solely and exclusively
98 for religious, charitable, scientific or educational purposes, or
99 for the prevention of cruelty to children or animals, no part of
100 the net earnings of which inure to the benefit of any private
101 stockholder or individual. This deduction shall be allowed in an
102 amount not to exceed twenty percent (20%) of the net income. Such
103 contributions or gifts shall be allowable as deductions only if

104 verified under rules and regulations prescribed by the
105 commissioner, with the approval of the Governor. Contributions
106 made in any form other than cash shall be allowed as a deduction,
107 subject to the limitations herein provided, in an amount equal to
108 the actual market value of the contributions at the time the
109 contribution is actually made and consummated.

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

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

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

130 (i) The plan or trust be irrevocable.

131 (ii) The plan or trust constitute a part of a
132 pension plan, stock bonus plan, disability or death-benefit plan,
133 or profit-sharing plan for the exclusive benefit of some or all of
134 the employer's employees and/or officers, or their beneficiaries,
135 for the purpose of distributing the corpus and income of the plan
136 or trust to such employees and/or officers, or their
137 beneficiaries.

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

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

148 (1) **Net operating loss carrybacks and carryovers.** A
149 net operating loss for any taxable year ending after December 31,
150 1993, and taxable years thereafter, shall be a net operating loss
151 carryback to each of the three (3) taxable years preceding the
152 taxable year of the loss. If the net operating loss for any
153 taxable year is not exhausted by carrybacks to the three (3)
154 taxable years preceding the taxable year of the loss, then there
155 shall be a net operating loss carryover to each of the fifteen

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

158 For any taxable year ending after December 31, 1997, the
159 period for net operating loss carrybacks and net operating loss
160 carryovers shall be the same as those established by the Internal
161 Revenue Code and the rules, regulations, rulings and
162 determinations promulgated thereunder as in effect at the taxable
163 year end or on December 31, 2000, whichever is earlier.

164 A net operating loss for any taxable year ending after
165 December 31, 2001, and taxable years thereafter, shall be a net
166 operating loss carryback to each of the two (2) taxable years
167 preceding the taxable year of the loss. If the net operating loss
168 for any taxable year is not exhausted by carrybacks to the two (2)
169 taxable years preceding the taxable year of the loss, then there
170 shall be a net operating loss carryover to each of the twenty (20)
171 taxable years following the taxable year of the loss beginning
172 with any taxable year after the taxable year of the loss.

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

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

179 (ii) No personal exemption deduction shall be
180 allowed.

181 (iii) Allowable deductions which are not
182 attributable to taxpayer's trade or business shall be allowed only
183 to the extent of the amount of gross income not derived from such
184 trade or business.

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

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

200 (n) **Dividend distributions - real estate investment**
201 **trusts.** "Real estate investment trust" (hereinafter referred to
202 as REIT) shall have the meaning ascribed to such term in Section
203 856 of the federal Internal Revenue Code of 1986, as amended. A
204 REIT is allowed a dividend distributed deduction if the dividend
205 distributions meet the requirements of Section 857 or are

206 otherwise deductible under Section 858 or 860, federal Internal
207 Revenue Code of 1986, as amended. In addition:

208 (i) A dividend distributed deduction shall only be
209 allowed for dividends paid by a publicly traded REIT. A qualified
210 REIT subsidiary shall be allowed a dividend distributed deduction
211 if its owner is a publicly traded REIT.

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

217 (iii) A holding corporation receiving a dividend
218 from a REIT shall not be allowed the deduction in Section
219 27-7-15(4)(t).

220 (iv) Any REIT not allowed the dividend distributed
221 deduction in the federal Internal Revenue Code of 1986, as
222 amended, shall not be allowed a dividend distributed deduction
223 under this chapter.

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

228 (o) **Contributions to college savings trust fund**
229 **accounts.** Contributions or payments to a Mississippi Affordable
230 College Savings Program account are deductible as provided under
231 Section 37-155-113. Payments made under a prepaid tuition

232 contract entered into under the Mississippi Prepaid Affordable
233 College Tuition Program are deductible as provided under Section
234 37-155-17.

235 (p) **Contributions of human pharmaceutical products.** To
236 the extent that a "major supplier" as defined in Section
237 27-13-13(2) (d) contributes human pharmaceutical products in excess
238 of Two Hundred Fifty Million Dollars (\$250,000,000.00) as
239 determined under Section 170 of the Internal Revenue Code, the
240 charitable contribution limitation associated with those donations
241 shall follow the federal limitation but cannot result in the
242 Mississippi net income being reduced below zero.

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

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

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

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

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

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

260 3. Royalty, patent, technical and copyright
261 fees;

262 4. Licensing fees; and

263 5. Other similar expenses and costs.

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

267 (iii) "Interest expenses and cost" means amounts
268 directly or indirectly allowed as deductions for purposes of
269 determining taxable income under this chapter to the extent such
270 interest expenses and costs are directly or indirectly for,
271 related to, or in connection with the direct or indirect
272 acquisition, maintenance, management, ownership, sale, exchange or
273 disposition of intangible property.

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

280 (v) "Related entity" means:

281 1. A stockholder who is an individual or a
282 member of the stockholder's family, as defined in regulations

283 prescribed by the commissioner, if the stockholder and the members
284 of the stockholder's family own, directly, indirectly,
285 beneficially or constructively, in the aggregate, at least fifty
286 percent (50%) of the value of the taxpayer's outstanding stock;

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

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

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

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

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

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

316 (ii) The transaction giving rise to the interest
317 expenses and costs or intangible expenses and costs between the
318 taxpayer and related member was done primarily for a valid
319 business purpose other than the avoidance of taxes, and the
320 related member is not primarily engaged in the acquisition, use,
321 maintenance or management, ownership, sale, exchange or any other
322 disposition of intangible property.

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

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

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

333 (a) The amount allowable for individual nonbusiness
334 itemized deductions for federal income tax purposes where the

335 individual is eligible to elect, for the taxable year, to itemize
336 deductions on his federal return except the following:

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

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

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

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

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

351 (i) Three Thousand Four Hundred Dollars
352 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
353 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
354 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
355 in the case of married individuals filing a joint or combined
356 return;

357 (ii) One Thousand Seven Hundred Dollars
358 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
359 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
360 Three Hundred Dollars (\$2,300.00) for each calendar year

361 thereafter in the case of married individuals filing separate
362 returns;

363 (iii) Three Thousand Four Hundred Dollars
364 (\$3,400.00) in the case of a head of family; or

365 (iv) Two Thousand Three Hundred Dollars
366 (\$2,300.00) in the case of an individual who is not married.

367 In the case of a husband and wife living together, having
368 separate incomes, and filing combined returns, the standard
369 deduction authorized may be divided in any manner they choose. In
370 the case of separate returns by a husband and wife, the standard
371 deduction shall not be allowed to either if the taxable income of
372 one of the spouses is determined without regard to the standard
373 deduction.

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

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

383 **SECTION 2.** Nothing in this act shall affect or defeat any
384 claim, assessment, appeal, suit, right or cause of action for
385 taxes due or accrued under the income tax laws before the date on
386 which this act becomes effective, whether such claims,

387 assessments, appeals, suits or actions have been begun before the
388 date on which this act becomes effective or are begun thereafter;
389 and the provisions of the income tax laws are expressly continued
390 in full force, effect and operation for the purpose of the
391 assessment, collection and enrollment of liens for any taxes due
392 or accrued and the execution of any warrant under such laws before
393 the date on which this act becomes effective, and for the
394 imposition of any penalties, forfeitures or claims for failure to
395 comply with such laws.

396 **SECTION 3.** This act shall take effect and be in force from
397 and after July 1, 2021, and shall stand repealed on June 30, 2021.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 AND
5 MANUFACTURING, THE ALLOWANCE FOR BONUS DEPRECIATION CONFORMS WITH
6 THE FEDERAL BONUS DEPRECIATION RATES AND REASONABLE ALLOWANCE FOR
7 DEPRECIATION IS NO LESS THAN ONE HUNDRED PERCENT; AND FOR RELATED
8 PURPOSES.

SS26\HB1356A.J

Eugene S. Clarke
Secretary of the Senate