

Senate Amendments to House Bill No. 1108

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:

13 **SECTION 1.** (1) The following words and phrases shall have
14 the meanings as defined in this section unless the context clearly
15 indicates otherwise:

16 (a) "Eligible taxpayer" means any railroad that is
17 classified by the United States Surface Transportation Board as a
18 Class II or Class III railroad.

19 (b) "Eligible transferee" means any taxpayer having a
20 liability for taxes under this chapter.

21 (c) "Qualified railroad reconstruction or replacement
22 expenditures" means gross expenditures for maintenance,
23 reconstruction or replacement of railroad infrastructure,
24 including track, roadbed, bridges, industrial leads and sidings,
25 and track-related structures owned or leased by a Class II or
26 Class III railroad in Mississippi as of January 1, 2022.

27 (d) "Qualified new rail infrastructure expenditures"
28 means gross expenditures for new construction of industrial leads,
29 switches, spurs and sidings and extensions of existing sidings,

30 for serving new customer locations or expansions in Mississippi,
31 by a Class II or Class III railroad located in Mississippi.

32 (2) Subject to the provisions of this section, an eligible
33 taxpayer making qualified railroad reconstruction or replacement
34 expenditures shall be allowed a credit against the taxes imposed
35 under this chapter. The credit shall be for an amount equal to
36 the lesser of fifty percent (50%) of an eligible taxpayer's
37 qualified railroad reconstruction or replacement expenditures for
38 the taxable year or the product of Five Thousand Dollars
39 (\$5,000.00) multiplied by the number of miles of railroad track
40 owned or leased within the State of Mississippi by the eligible
41 taxpayer as of the close of the taxable year. For qualified new
42 rail infrastructure expenditures, the credit shall be for an
43 amount equal to the lesser of fifty percent (50%) of an eligible
44 taxpayer's qualified new rail infrastructure expenditures for the
45 taxable year, capped at One Million Dollars (\$1,000,000.00) per
46 new rail-served customer project. However, the tax credit shall
47 not exceed the amount of tax imposed upon the taxpayer for the
48 taxable year reduced by the sum of all other credits allowable to
49 the taxpayer under this chapter, except credit for tax payments
50 made by or on behalf of the taxpayer. Any tax credit claimed
51 under this section but not used in any taxable year may be carried
52 forward for five (5) consecutive years from the close of the
53 taxable year in which the credit was earned. The aggregate amount
54 of credits that may be claimed by all taxpayers claiming a credit
55 under this section during a calendar year shall not exceed Eight

56 Million Dollars (\$8,000,000.00). In addition, an eligible
57 taxpayer may transfer by written agreement any unused tax credit
58 to an eligible transferee at any time during the year in which the
59 credit is earned and the five (5) years following the taxable year
60 in which the qualified railroad reconstruction or replacement
61 expenditures or the qualified new rail infrastructure expenditures
62 are made. The eligible taxpayer and the eligible transferee must
63 jointly file a copy of the written transfer agreement with the
64 Department of Revenue within thirty (30) days of the transfer.
65 The written agreement must contain the: (a) name, address, and
66 taxpayer identification number of the parties to the transfer; (b)
67 taxable year the eligible taxpayer incurred the qualified railroad
68 reconstruction or replacement expenditures or the qualified new
69 rail infrastructure expenditures; (c) amount of credit being
70 transferred; and (d) taxable year or years for which the credit
71 may be claimed by the eligible transferee.

72 **SECTION 2.** Section 1 of this act shall be codified as a new
73 section in Title 27, Chapter 7, Mississippi Code of 1972.

74 **SECTION 3.** Nothing in this act shall affect or defeat any
75 claim, assessment, appeal, suit, right or cause of action for
76 taxes due or accrued under the income tax laws before the date on
77 which this act becomes effective, whether such claims,
78 assessments, appeals, suits or actions have been begun before the
79 date on which this act becomes effective or are begun thereafter;
80 and the provisions of the income tax laws are expressly continued
81 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.

SECTION 4. Section 27-7-17, Mississippi Code of 1972, as amended by Senate Bill No. 2095, 2022 Regular Session, and House Bill No. 1529, 2022 Regular Session, is amended as follows:

Through February 1, 2022, this section shall read 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. 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 for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inure to the benefit of any private stockholder or individual. This deduction shall be allowed in an amount not to exceed twenty percent (20%) of the net income. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the commissioner, with the approval of the Governor. Contributions made in any form other than cash shall be allowed as a deduction,

subject to the limitations herein provided, in an amount equal to the actual market value of the contributions at the time the contribution is actually made and consummated.

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

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

(k) **Contributions to employee pension plans.** Contributions made by an employer to a plan or a trust forming part of a pension plan, stock bonus plan, disability or death-benefit plan, or profit-sharing plan of such employer for 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.

(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;

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

338 3. Royalty, patent, technical and copyright
339 fees;

340 4. Licensing fees; and

341 5. Other similar expenses and costs.

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

345 (iii) "Interest expenses and cost" means amounts
346 directly or indirectly allowed as deductions for purposes of
347 determining taxable income under this chapter to the extent such
348 interest expenses and costs are directly or indirectly for,
349 related to, or in connection with the direct or indirect
350 acquisition, maintenance, management, ownership, sale, exchange or
351 disposition of intangible property.

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

358 (v) "Related entity" means:

359 1. A stockholder who is an individual or a
360 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, maintenance or management, ownership, sale, exchange or any other disposition of intangible property.

(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 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.

(5) Notwithstanding any other provision in Title 27, Mississippi Code of 1972, there shall be allowed an income tax deduction for otherwise deductible expenses if:

(a) The payment(s) for such deductible expenses are made with the grant or loan program of the Paycheck Protection Program as authorized under (i) the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the Consolidated Appropriations Act of 2021, (ii) the COVID-19 Economic Injury Disaster Loan Program, (iii) the 2020 COVID-19 Mississippi Business Assistance Act, (iv) the Rental Assistance Grant Program, (v) the Shuttered Venue Operators Grant Program and Restaurant Revitalization Fund authorized by the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and amended by the federal American Rescue Plan Act, and/or (vi) the Mississippi Agriculture Stabilization Act; and

(b) Such deductible expenses shall be allowed as deductions for federal income tax purposes.

From and after February 2, 2022, this section shall read 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. There shall also be allowed a deduction for expenses as provided in Section 26 of Senate Bill No. 2095, 2022 Regular Session.

(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. 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 for religious, charitable, scientific or educational purposes, or

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

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

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

(k) **Contributions to employee pension plans.** Contributions made by an employer to a plan or a trust forming part of a pension plan, stock bonus plan, disability or death-benefit plan, or profit-sharing plan of such employer for 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

620 carryback to each of the three (3) taxable years preceding the
621 taxable year of the loss. If the net operating loss for any
622 taxable year is not exhausted by carrybacks to the three (3)
623 taxable years preceding the taxable year of the loss, then there
624 shall be a net operating loss carryover to each of the fifteen
625 (15) taxable years following the taxable year of the loss
626 beginning with any taxable year after December 31, 1991.

627 For any taxable year ending after December 31, 1997, the
628 period for net operating loss carrybacks and net operating loss
629 carryovers shall be the same as those established by the Internal
630 Revenue Code and the rules, regulations, rulings and
631 determinations promulgated thereunder as in effect at the taxable
632 year end or on December 31, 2000, whichever is earlier.

633 A net operating loss for any taxable year ending after
634 December 31, 2001, and taxable years thereafter, shall be a net
635 operating loss carryback to each of the two (2) taxable years
636 preceding the taxable year of the loss. If the net operating loss
637 for any taxable year is not exhausted by carrybacks to the two (2)
638 taxable years preceding the taxable year of the loss, then there
639 shall be a net operating loss carryover to each of the twenty (20)
640 taxable years following the taxable year of the loss beginning
641 with any taxable year after the taxable year of the loss.

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

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

648 (ii) No personal exemption deduction shall be
649 allowed.

650 (iii) Allowable deductions which are not
651 attributable to taxpayer's trade or business shall be allowed only
652 to the extent of the amount of gross income not derived from such
653 trade or business.

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

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

669 (n) **Dividend distributions - real estate investment**
670 **trusts.** "Real estate investment trust" (hereinafter referred to
671 as REIT) shall have the meaning ascribed to such term in Section

672 856 of the federal Internal Revenue Code of 1986, as amended. A
673 REIT is allowed a dividend distributed deduction if the dividend
674 distributions meet the requirements of Section 857 or are
675 otherwise deductible under Section 858 or 860, federal Internal
676 Revenue Code of 1986, as amended. In addition:

677 (i) A dividend distributed deduction shall only be
678 allowed for dividends paid by a publicly traded REIT. A qualified
679 REIT subsidiary shall be allowed a dividend distributed deduction
680 if its owner is a publicly traded REIT.

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

686 (iii) A holding corporation receiving a dividend
687 from a REIT shall not be allowed the deduction in Section
688 27-7-15(4)(t).

689 (iv) Any REIT not allowed the dividend distributed
690 deduction in the federal Internal Revenue Code of 1986, as
691 amended, shall not be allowed a dividend distributed deduction
692 under this chapter.

693 The commissioner is authorized to promulgate rules and
694 regulations consistent with the provisions in Section 269 of the
695 federal Internal Revenue Code of 1986, as amended, so as to
696 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.

(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,

723 sale, exchange or any other disposition of intangible property to
724 the extent such amounts are allowed as deductions or costs in
725 determining taxable income under this chapter;

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

729 3. Royalty, patent, technical and copyright
730 fees;

731 4. Licensing fees; and

732 5. Other similar expenses and costs.

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

736 (iii) "Interest expenses and cost" means amounts
737 directly or indirectly allowed as deductions for purposes of
738 determining taxable income under this chapter to the extent such
739 interest expenses and costs are directly or indirectly for,
740 related to, or in connection with the direct or indirect
741 acquisition, maintenance, management, ownership, sale, exchange or
742 disposition of intangible property.

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

749 (v) "Related entity" means:

750 1. A stockholder who is an individual or a
751 member of the stockholder's family, as defined in regulations
752 prescribed by the commissioner, if the stockholder and the members
753 of the stockholder's family own, directly, indirectly,
754 beneficially or constructively, in the aggregate, at least fifty
755 percent (50%) of the value of the taxpayer's outstanding stock;

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

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

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

773 (b) In computing net income, a taxpayer shall add back
774 otherwise deductible interest expenses and costs and intangible

775 expenses and costs directly or indirectly paid, accrued to or
776 incurred, in connection directly or indirectly with one or more
777 direct or indirect transactions with one or more related members.

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

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

785 (ii) The transaction giving rise to the interest
786 expenses and costs or intangible expenses and costs between the
787 taxpayer and related member was done primarily for a valid
788 business purpose other than the avoidance of taxes, and the
789 related member is not primarily engaged in the acquisition, use,
790 maintenance or management, ownership, sale, exchange or any other
791 disposition of intangible property.

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

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

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

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

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

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

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

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

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

820 (i) Three Thousand Four Hundred Dollars
821 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
822 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
823 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
824 in the case of married individuals filing a joint or combined
825 return;

826 (ii) One Thousand Seven Hundred Dollars
827 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
828 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
829 Three Hundred Dollars (\$2,300.00) for each calendar year
830 thereafter in the case of married individuals filing separate
831 returns;

832 (iii) Three Thousand Four Hundred Dollars
833 (\$3,400.00) in the case of a head of family; or

834 (iv) Two Thousand Three Hundred Dollars
835 (\$2,300.00) in the case of an individual who is not married.

836 In the case of a husband and wife living together, having
837 separate incomes, and filing combined returns, the standard
838 deduction authorized may be divided in any manner they choose. In
839 the case of separate returns by a husband and wife, the standard
840 deduction shall not be allowed to either if the taxable income of
841 one of the spouses is determined without regard to the standard
842 deduction.

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

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

(5) Notwithstanding any other provision in Title 27, Mississippi Code of 1972, there shall be allowed an income tax deduction for otherwise deductible expenses if:

(a) The payment(s) for such deductible expenses are made with the grant or loan program of the Paycheck Protection Program as authorized under (i) the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the Consolidated Appropriations Act of 2021, (ii) the COVID-19 Economic Injury Disaster Loan Program, (iii) the 2020 COVID-19 Mississippi Business Assistance Act, (iv) the Rental Assistance Grant Program, (v) the Shuttered Venue Operators Grant Program and Restaurant Revitalization Fund authorized by the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and amended by the federal American Rescue Plan Act, and/or (vi) the Mississippi Agriculture Stabilization Act; and

(b) Such deductible expenses shall be allowed as deductions for federal income tax purposes.

SECTION 5. Section 4 of this act shall take effect and be in force from and after January 1, 2020. The remainder of this act shall take effect and be in force from and after January 1, 2022, and shall stand repealed on December 31, 2021.

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

AN ACT TO AUTHORIZE AN INCOME TAX CREDIT FOR CERTAIN RAILROAD RECONSTRUCTION OR REPLACEMENT EXPENDITURES AND FOR CERTAIN NEW RAIL INFRASTRUCTURE EXPENDITURES MADE BY CLASS II AND CLASS III RAILROADS; TO DEFINE CERTAIN TERMS FOR THE PURPOSES OF THIS ACT;

5 TO PROVIDE THE AMOUNT OF THE TAX CREDIT; TO PROVIDE THAT ANY UNUSED
6 PORTION OF THE TAX CREDIT MAY BE CARRIED FORWARD; TO PROVIDE THAT
7 ANY UNUSED PORTION OF THE TAX CREDIT MAY BE TRANSFERRED TO ANOTHER
8 TAXPAYER; TO AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, AS
9 AMENDED BY SENATE BILL NO. 2095, 2022 REGULAR SESSION, AND HOUSE
10 BILL NO. 1529, 2022 REGULAR SESSION, TO CONFORM TO THE AMENDMENTS
11 MADE BY BOTH BILLS; AND FOR RELATED PURPOSES.

SS08\HB1108A.1J

Eugene S. Clarke
Secretary of the Senate