

By: Representatives Lamar, Stamps, Brown
(20th), Hopkins, Williamson, Boyd (19th)

To: Ways and Means

HOUSE BILL NO. 1733

1 AN ACT TO AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE METHODS OF DEPRECIATION THAT MAY BE USED FOR CERTAIN
3 EXPENDITURES AND PROPERTY UNDER THE STATE INCOME TAX LAW; AND FOR
4 RELATED PURPOSES.

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

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

8 27-7-17. In computing taxable income, there shall be allowed
9 as deductions:

10 (1) **Business deductions.**

11 (a) **Business expenses.** All the ordinary and necessary
12 expenses paid or incurred during the taxable year in carrying on
13 any trade or business, including a reasonable allowance for
14 salaries or other compensation for personal services actually
15 rendered; nonreimbursable traveling expenses incident to current
16 employment, including a reasonable amount expended for meals and
17 lodging while away from home in the pursuit of a trade or
18 business; and rentals or other payments required to be made as a
19 condition of the continued use or possession, for purposes of the



20 trade or business of property to which the taxpayer has not taken
21 or is not taking title or in which he had no equity. Expense
22 incurred in connection with earning and distributing nontaxable
23 income is not an allowable deduction. Limitations on
24 entertainment expenses shall conform to the provisions of the
25 Internal Revenue Code of 1986. There shall also be allowed a
26 deduction for expenses as provided in Section 41-137-51.

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



45 course of the taxpayer's business. Any corporation, association,
46 organization or other entity taxable under Section 27-7-23(c)
47 shall allocate interest expense as provided in Section
48 27-7-23(c) (3) (I).

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

58 (d) **Business losses.**

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

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

65 (e) **Bad debts.** Losses from debts ascertained to be
66 worthless and charged off during the taxable year, if sustained in
67 the conduct of the regular trade or business of the taxpayer;
68 provided, that such losses shall be allowed only when the taxpayer



69 has reported as income, on the accrual basis, the amount of such
70 debt or account.

71 (f) **Depreciation.** (i) A reasonable allowance for
72 exhaustion, wear and tear of property used in the trade or
73 business, or rental property, and depreciation upon buildings
74 based upon their reasonable value as of March 16, 1912, if
75 acquired prior thereto, and upon cost if acquired subsequent to
76 that date. In the case of new or used aircraft, equipment,
77 engines, or other parts and tools used for aviation, allowance for
78 bonus depreciation conforms with the federal bonus depreciation
79 rates and reasonable allowance for depreciation under this section
80 is no less than one hundred percent (100%).

81 (ii) 1. For the purposes of computing income tax
82 for tax years beginning after December 31, 2022, a taxpayer may
83 treat specified research or experimental expenditures that are
84 paid or incurred by the taxpayer during the tax year in connection
85 with the taxpayer's trade or business as expenses that are not
86 chargeable to the capital account. Such expenditures so treated
87 shall be allowed as an immediate deduction. Such expenditures
88 shall remain allowable as a full and immediate expense deduction
89 in the year in which the expenses are incurred notwithstanding any
90 changes to the federal Internal Revenue Code related to the
91 depreciation of such specified research or experimental
92 expenditures. A taxpayer may alternatively treat the depreciation
93 of such specified research or experimental expenditures in



94 accordance with the schedule provided in 26 USCS Section 174. A
95 taxpayer may make an election whether to take a full and immediate
96 deduction for such expenditures and/or to depreciate the
97 expenditures in accordance with 26 USCS Section 174. Such an
98 election may be made for any tax year if made not later than the
99 time prescribed by law for filing the return for such tax year,
100 including extensions thereof. The method so elected by the
101 taxpayer is irrevocable unless the commissioner specifically
102 allows a change in the method. The total of any method or
103 combination of methods of depreciation used under this item 1
104 cannot exceed one hundred percent (100%) of the cost of the
105 subject property.

106 2. For the purpose of computing income tax
107 for tax years beginning after December 31, 2022, expenditures for
108 business assets that are qualified property or qualified
109 improvement property shall be eligible for one hundred percent
110 (100%) bonus depreciation and may be deducted as an expense
111 incurred by the taxpayer during the tax year during which the
112 property is placed in service, notwithstanding any changes to
113 federal law related to cost recovery beginning on January 1, 2023,
114 or on any other date. A taxpayer may alternatively treat the
115 depreciation of such business assets in accordance with the
116 schedule provided in 26 USCS Section 168. A taxpayer may make an
117 election whether to take a bonus depreciation deduction for such
118 expenditures and/or to depreciate the expenditures in accordance



119 with 26 USCS Section 168. Such an election may be made for any
120 tax year if made not later than the time prescribed by law for
121 filing the return for such tax year, including extensions thereof.
122 The method so elected by the taxpayer is irrevocable unless the
123 commissioner specifically allows a change in the method. The
124 total of any method or combination of methods of depreciation used
125 under this item 2 cannot exceed one hundred percent (100%) of the
126 cost of the subject property.

127 3. For the purposes of this subparagraph
128 (ii), unless the context requires otherwise, the following terms
129 shall have the meanings ascribed herein:

130 a. "Qualified improvement property"
131 means and has the same definition as such term has in 26 USCS
132 Section 168(e)(6) as it existed on January 1, 2021, and shall
133 apply to property placed in service after December 31, 2022.

134 b. "Qualified property" means and has
135 the same definition as such term has in 26 USCS Section 168(k) as
136 it existed on January 1, 2021, and shall apply to property placed
137 in service after December 31, 2022.

138 c. "Specified research or experimental
139 expenditures" means and has the same definition as such term has
140 in 26 USCS Section 174 as it existed on January 1, 2021.

141 (g) **Depletion.** In the case of mines, oil and gas
142 wells, other natural deposits and timber, a reasonable allowance
143 for depletion and for depreciation of improvements, based upon



144 cost, including cost of development, not otherwise deducted, or
145 fair market value as of March 16, 1912, if acquired prior to that
146 date, such allowance to be made upon regulations prescribed by the
147 commissioner, with the approval of the Governor.

148 (h) **Contributions or gifts.** Except as otherwise
149 provided in paragraph (p) of this subsection or subsection (3)(a)
150 of this section for individuals, contributions or gifts made by
151 corporations within the taxable year to corporations,
152 organizations, associations or institutions, including Community
153 Chest funds, foundations and trusts created solely and exclusively
154 for religious, charitable, scientific or educational purposes, or
155 for the prevention of cruelty to children or animals, no part of
156 the net earnings of which inure to the benefit of any private
157 stockholder or individual. This deduction shall be allowed in an
158 amount not to exceed twenty percent (20%) of the net income. Such
159 contributions or gifts shall be allowable as deductions only if
160 verified under rules and regulations prescribed by the
161 commissioner, with the approval of the Governor. Contributions
162 made in any form other than cash shall be allowed as a deduction,
163 subject to the limitations herein provided, in an amount equal to
164 the actual market value of the contributions at the time the
165 contribution is actually made and consummated.

166 (i) **Reserve funds - insurance companies.** In the case
167 of insurance companies the net additions required by law to be
168 made within the taxable year to reserve funds when such reserve



169 funds are maintained for the purpose of liquidating policies at
170 maturity.

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

174 (k) **Contributions to employee pension plans.**
175 Contributions made by an employer to a plan or a trust forming
176 part of a pension plan, stock bonus plan, disability or
177 death-benefit plan, or profit-sharing plan of such employer for
178 the exclusive benefit of some or all of his, their, or its
179 employees, or their beneficiaries, shall be deductible from his,
180 their, or its income only to the extent that, and for the taxable
181 year in which, the contribution is deductible for federal income
182 tax purposes under the Internal Revenue Code of 1986 and any other
183 provisions of similar purport in the Internal Revenue Laws of the
184 United States, and the rules, regulations, rulings and
185 determinations promulgated thereunder, provided that:

186 (i) The plan or trust be irrevocable.

187 (ii) The plan or trust constitute a part of a
188 pension plan, stock bonus plan, disability or death-benefit plan,
189 or profit-sharing plan for the exclusive benefit of some or all of
190 the employer's employees and/or officers, or their beneficiaries,
191 for the purpose of distributing the corpus and income of the plan
192 or trust to such employees and/or officers, or their
193 beneficiaries.



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

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

204 (1) **Net operating loss carrybacks and carryovers.** A
205 net operating loss for any taxable year ending after December 31,
206 1993, and taxable years thereafter, shall be a net operating loss
207 carryback to each of the three (3) taxable years preceding the
208 taxable year of the loss. If the net operating loss for any
209 taxable year is not exhausted by carrybacks to the three (3)
210 taxable years preceding the taxable year of the loss, then there
211 shall be a net operating loss carryover to each of the fifteen
212 (15) taxable years following the taxable year of the loss
213 beginning with any taxable year after December 31, 1991.

214 For any taxable year ending after December 31, 1997, the
215 period for net operating loss carrybacks and net operating loss
216 carryovers shall be the same as those established by the Internal
217 Revenue Code and the rules, regulations, rulings and



218 determinations promulgated thereunder as in effect at the taxable
219 year end or on December 31, 2000, whichever is earlier.

220 A net operating loss for any taxable year ending after
221 December 31, 2001, and taxable years thereafter, shall be a net
222 operating loss carryback to each of the two (2) taxable years
223 preceding the taxable year of the loss. If the net operating loss
224 for any taxable year is not exhausted by carrybacks to the two (2)
225 taxable years preceding the taxable year of the loss, then there
226 shall be a net operating loss carryover to each of the twenty (20)
227 taxable years following the taxable year of the loss beginning
228 with any taxable year after the taxable year of the loss.

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

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

235 (ii) No personal exemption deduction shall be
236 allowed.

237 (iii) Allowable deductions which are not
238 attributable to taxpayer's trade or business shall be allowed only
239 to the extent of the amount of gross income not derived from such
240 trade or business.

241 Any taxpayer entitled to a carryback period as provided by
242 this paragraph may elect to relinquish the entire carryback period



243 with respect to a net operating loss for any taxable year ending
244 after December 31, 1991. The election shall be made in the manner
245 prescribed by the Department of Revenue and shall be made by the
246 due date, including extensions of time, for filing the taxpayer's
247 return for the taxable year of the net operating loss for which
248 the election is to be in effect. The election, once made for any
249 taxable year, shall be irrevocable for that taxable year.

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

256 (n) **Dividend distributions - real estate investment**
257 **trusts.** "Real estate investment trust" (hereinafter referred to
258 as REIT) shall have the meaning ascribed to such term in Section
259 856 of the federal Internal Revenue Code of 1986, as amended. A
260 REIT is allowed a dividend distributed deduction if the dividend
261 distributions meet the requirements of Section 857 or are
262 otherwise deductible under Section 858 or 860, federal Internal
263 Revenue Code of 1986, as amended. In addition:

264 (i) A dividend distributed deduction shall only be
265 allowed for dividends paid by a publicly traded REIT. A qualified
266 REIT subsidiary shall be allowed a dividend distributed deduction
267 if its owner is a publicly traded REIT.



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

273 (iii) A holding corporation receiving a dividend
274 from a REIT shall not be allowed the deduction in Section
275 27-7-15(4)(t).

276 (iv) Any REIT not allowed the dividend distributed
277 deduction in the federal Internal Revenue Code of 1986, as
278 amended, shall not be allowed a dividend distributed deduction
279 under this chapter.

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

284 (o) **Contributions to college savings trust fund**
285 **accounts.** Contributions or payments to a Mississippi Affordable
286 College Savings Program account are deductible as provided under
287 Section 37-155-113. Payments made under a prepaid tuition
288 contract entered into under the Mississippi Prepaid Affordable
289 College Tuition Program are deductible as provided under Section
290 37-155-17.

291 (p) **Contributions of human pharmaceutical products.** To
292 the extent that a "major supplier" as defined in Section



293 27-13-13(2) (d) contributes human pharmaceutical products in excess
294 of Two Hundred Fifty Million Dollars (\$250,000,000.00) as
295 determined under Section 170 of the Internal Revenue Code, the
296 charitable contribution limitation associated with those donations
297 shall follow the federal limitation but cannot result in the
298 Mississippi net income being reduced below zero.

299 (q) **Contributions to ABLE trust fund accounts.**

300 Contributions or payments to a Mississippi Achieving a Better Life
301 Experience (ABLE) Program account are deductible as provided under
302 Section 43-28-13.

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

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

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

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

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

316 3. Royalty, patent, technical and copyright
317 fees;



318 4. Licensing fees; and
319 5. Other similar expenses and costs.

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

323 (iii) "Interest expenses and cost" means amounts
324 directly or indirectly allowed as deductions for purposes of
325 determining taxable income under this chapter to the extent such
326 interest expenses and costs are directly or indirectly for,
327 related to, or in connection with the direct or indirect
328 acquisition, maintenance, management, ownership, sale, exchange or
329 disposition of intangible property.

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

336 (v) "Related entity" means:

337 1. A stockholder who is an individual or a
338 member of the stockholder's family, as defined in regulations
339 prescribed by the commissioner, if the stockholder and the members
340 of the stockholder's family own, directly, indirectly,
341 beneficially or constructively, in the aggregate, at least fifty
342 percent (50%) of the value of the taxpayer's outstanding stock;



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

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

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

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

365 (c) The adjustments required by this subsection shall
366 not apply to such portion of interest expenses and costs and



367 intangible expenses and costs that the taxpayer can establish
368 meets one (1) of the following:

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

372 (ii) The transaction giving rise to the interest
373 expenses and costs or intangible expenses and costs between the
374 taxpayer and related member was done primarily for a valid
375 business purpose other than the avoidance of taxes, and the
376 related member is not primarily engaged in the acquisition, use,
377 maintenance or management, ownership, sale, exchange or any other
378 disposition of intangible property.

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

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

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

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



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

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

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

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

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

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

407 (i) Three Thousand Four Hundred Dollars
408 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
409 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
410 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
411 in the case of married individuals filing a joint or combined
412 return;

413 (ii) One Thousand Seven Hundred Dollars
414 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
415 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand



416 Three Hundred Dollars (\$2,300.00) for each calendar year
417 thereafter in the case of married individuals filing separate
418 returns;

419 (iii) Three Thousand Four Hundred Dollars
420 (\$3,400.00) in the case of a head of family; or

421 (iv) Two Thousand Three Hundred Dollars
422 (\$2,300.00) in the case of an individual who is not married.

423 In the case of a husband and wife living together, having
424 separate incomes, and filing combined returns, the standard
425 deduction authorized may be divided in any manner they choose. In
426 the case of separate returns by a husband and wife, the standard
427 deduction shall not be allowed to either if the taxable income of
428 one of the spouses is determined without regard to the standard
429 deduction.

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

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



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

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

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

456 **SECTION 2.** This act shall take effect and be in force from
457 and after January 1, 2023.

