Senate Amendments to House Bill No. 1733

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:

7 SECTION 1. Section 27-7-17, Mississippi Code of 1972, as 8 amended by House Bill No. 1125, 2023 Regular Session, is amended 9 as follows:

10 27-7-17. In computing taxable income, there shall be allowed 11 as deductions:

12

(1) Business deductions.

13 (a) Business expenses. All the ordinary and necessary 14 expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for 15 16 salaries or other compensation for personal services actually 17 rendered; nonreimbursable traveling expenses incident to current 18 employment, including a reasonable amount expended for meals and 19 lodging while away from home in the pursuit of a trade or 20 business; and rentals or other payments required to be made as a 21 condition of the continued use or possession, for purposes of the 22 trade or business of property to which the taxpayer has not taken 23 or is not taking title or in which he had no equity. Expense н. в. 1733

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 41-137-51.

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

49 shall allocate interest expense as provided in Section 50 27-7-23(c)(3)(I).

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

60

(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.

64 (ii) Limitations on losses from passive activities
65 and rental real estate shall conform to the provisions of the
66 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. (i) A reasonable allowance for exhaustion, wear and tear of property used in the trade or H. B. 1733 PAGE 3 75 business, or rental property, and depreciation upon buildings 76 based upon their reasonable value as of March 16, 1912, if 77 acquired prior thereto, and upon cost if acquired subsequent to 78 that date. In the case of new or used aircraft, equipment, 79 engines, or other parts and tools used for aviation, allowance for 80 bonus depreciation conforms with the federal bonus depreciation rates and reasonable allowance for depreciation under this section 81 82 is no less than one hundred percent (100%).

83 (ii) 1. For the purposes of computing income tax 84 for tax years beginning after December 31, 2022, a taxpayer may 85 treat specified research or experimental expenditures that are 86 paid or incurred by the taxpayer during the tax year in connection 87 with the taxpayer's trade or business as expenses that are not 88 chargeable to the capital account. Such expenditures so treated 89 shall be allowed as an immediate deduction. Such expenditures 90 shall remain allowable as a full and immediate expense deduction 91 in the year in which the expenses are incurred notwithstanding any 92 changes to the federal Internal Revenue Code related to the 93 depreciation of such specified research or experimental 94 expenditures. A taxpayer may alternatively treat the depreciation 95 of such specified research or experimental expenditures in 96 accordance with the schedule provided in 26 USCS Section 174. A 97 taxpayer may make an election whether to take a full and immediate 98 deduction for such expenditures and/or to depreciate the 99 expenditures in accordance with 26 USCS Section 174. Such an 100 election may be made for any tax year if made not later than the н. в. 1733

101 time prescribed by law for filing the return for such tax year, 102 including extensions thereof. The method so elected by the 103 taxpayer is irrevocable unless the commissioner specifically 104 allows a change in the method. 105 2. For the purpose of computing income tax 106 for tax years beginning after December 31, 2022, expenditures for 107 business assets that are qualified property or qualified 108 improvement property shall be eligible for one hundred percent 109 (100%) bonus depreciation and may be deducted as an expense 110 incurred by the taxpayer during the tax year during which the 111 property is placed in service, notwithstanding any changes to 112 federal law related to cost recovery beginning on January 1, 2023, 113 or on any other date. A taxpayer may alternatively treat the 114 depreciation of such business assets in accordance with the schedule provided in 26 USCS Section 168. A taxpayer may make an 115 116 election whether to take a bonus depreciation deduction for such 117 expenditures and/or to depreciate the expenditures in accordance with 26 USCS Section 168. Such an election may be made for any 118 119 tax year if made not later than the time prescribed by law for 120 filing the return for such tax year, including extensions thereof. 121 The method so elected by the taxpayer is irrevocable unless the 122 commissioner specifically allows a change in the method. 123 3. In any taxable year in which any 26 USCS 124 Section 179 property is placed in service, a taxpayer may elect to 125 treat the cost of such property as an expense which is not 126 chargeable to a capital account, and any cost so treated shall be н. в. 1733

127 allowed as a deduction for that year. Mississippi's treatment of 128 the deduction shall conform to the provisions of 26 USCS Section 129 179 in effect for that year. 130 4. For the purposes of this subparagraph 131 (ii), unless the context requires otherwise, the following terms shall have the meanings ascribed herein: 132 133 a. "Qualified improvement property" 134 means and has the same definition as such term has in 26 USCS 135 Section 168(e)(6) as it existed on January 1, 2021, and shall 136 apply to property placed in service after December 31, 2022. b. "Qualified property" means and has 137 138 the same definition as such term has in 26 USCS Section 168(k) as 139 it existed on January 1, 2021, and shall apply to property placed 140 in service after December 31, 2022. 141 c. "Specified research or experimental 142 expenditures" means and has the same definition as such term has 143 in 26 USCS Section 174 as it existed on January 1, 2021. 144 5. Nothing in this subparagraph (ii) shall be 145 construed to nullify or otherwise alter the treatment of 146 depreciation expenses for any tax year prior to 2023. 147 6. The total of any method or combination of 148 methods of depreciation used under this subparagraph (ii) cannot 149 exceed one hundred percent (100%) of the cost of the subject 150 property. 151 **Depletion.** In the case of mines, oil and gas (a) 152 wells, other natural deposits and timber, a reasonable allowance H. B. 1733

153 for depletion and for depreciation of improvements, based upon 154 cost, including cost of development, not otherwise deducted, or 155 fair market value as of March 16, 1912, if acquired prior to that 156 date, such allowance to be made upon regulations prescribed by the 157 commissioner, with the approval of the Governor.

158 (h) Contributions or gifts. Except as otherwise 159 provided in paragraph (p) of this subsection or subsection (3)(a) 160 of this section for individuals, contributions or gifts made by 161 corporations within the taxable year to corporations, 162 organizations, associations or institutions, including Community 163 Chest funds, foundations and trusts created solely and exclusively 164 for religious, charitable, scientific or educational purposes, or 165 for the prevention of cruelty to children or animals, no part of 166 the net earnings of which inure to the benefit of any private 167 stockholder or individual. This deduction shall be allowed in an 168 amount not to exceed twenty percent (20%) of the net income. Such 169 contributions or gifts shall be allowable as deductions only if 170 verified under rules and regulations prescribed by the 171 commissioner, with the approval of the Governor. Contributions 172 made in any form other than cash shall be allowed as a deduction, 173 subject to the limitations herein provided, in an amount equal to 174 the actual market value of the contributions at the time the 175 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 H. B. 1733 PAGE 7 179 funds are maintained for the purpose of liquidating policies at 180 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.

184 (k) Contributions to employee pension plans. 185 Contributions made by an employer to a plan or a trust forming 186 part of a pension plan, stock bonus plan, disability or 187 death-benefit plan, or profit-sharing plan of such employer for the exclusive benefit of some or all of his, their, or its 188 189 employees, or their beneficiaries, shall be deductible from his, 190 their, or its income only to the extent that, and for the taxable 191 year in which, the contribution is deductible for federal income 192 tax purposes under the Internal Revenue Code of 1986 and any other 193 provisions of similar purport in the Internal Revenue Laws of the 194 United States, and the rules, regulations, rulings and 195 determinations promulgated thereunder, provided that:

196 (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.

207 Contributions to all plans or to all trusts of real or 208 personal property (or real and personal property combined) or to 209 insured plans created under a retirement plan for which provision 210 has been made under the laws of the United States of America, 211 making such contributions deductible from income for federal 212 income tax purposes, shall be deductible only to the same extent 213 under the Income Tax Laws of the State of Mississippi.

214 (1) Net operating loss carrybacks and carryovers. A 215 net operating loss for any taxable year ending after December 31, 216 1993, and taxable years thereafter, shall be a net operating loss 217 carryback to each of the three (3) taxable years preceding the 218 taxable year of the loss. If the net operating loss for any 219 taxable year is not exhausted by carrybacks to the three (3) 220 taxable years preceding the taxable year of the loss, then there 221 shall be a net operating loss carryover to each of the fifteen 222 (15) taxable years following the taxable year of the loss 223 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.

230 A net operating loss for any taxable year ending after December 31, 2001, and taxable years thereafter, shall be a net 231 232 operating loss carryback to each of the two (2) taxable years 233 preceding the taxable year of the loss. If the net operating loss 234 for any taxable year is not exhausted by carrybacks to the two (2) 235 taxable years preceding the taxable year of the loss, then there 236 shall be a net operating loss carryover to each of the twenty (20) 237 taxable years following the taxable year of the loss beginning 238 with any taxable year after the taxable year of the loss. 239 The term "net operating loss," for the purposes of this

240 paragraph, shall be the excess of the deductions allowed over the 241 gross income; provided, however, the following deductions shall 242 not be allowed in computing same:

243 (i) No net operating loss deduction shall be244 allowed.

245 (ii) No personal exemption deduction shall be 246 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 H. B. 1733 PAGE 10 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.

266 (n) Dividend distributions - real estate investment "Real estate investment trust" (hereinafter referred to 267 trusts. 268 as REIT) shall have the meaning ascribed to such term in Section 269 856 of the federal Internal Revenue Code of 1986, as amended. A 270 REIT is allowed a dividend distributed deduction if the dividend 271 distributions meet the requirements of Section 857 or are 272 otherwise deductible under Section 858 or 860, federal Internal 273 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

281 or related party would have received the dividend distributed 282 deduction under this chapter.

(iii) A holding corporation receiving a dividend from a REIT shall not be allowed the deduction in Section 285 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.

301 (p) Contributions of human pharmaceutical products. То 302 the extent that a "major supplier" as defined in Section 303 27-13-13(2)(d) contributes human pharmaceutical products in excess 304 of Two Hundred Fifty Million Dollars (\$250,000,000.00) as 305 determined under Section 170 of the Internal Revenue Code, the 306 charitable contribution limitation associated with those donations Н. В. 1733 PAGE 12

307 shall follow the federal limitation but cannot result in the 308 Mississippi net income being reduced below zero.

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

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

315

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

316 (i) "Intangible expenses and costs" include: 317 1. Expenses, losses and costs for, related to, or in connection directly or indirectly with the direct or 318 319 indirect acquisition, use, maintenance or management, ownership, 320 sale, exchange or any other disposition of intangible property to 321 the extent such amounts are allowed as deductions or costs in 322 determining taxable income under this chapter; 323 2. Expenses or losses related to or incurred in connection directly or indirectly with factoring transactions 324 325 or discounting transactions; 326 3. Royalty, patent, technical and copyright 327 fees; 328 Licensing fees; and 4. 329 Other similar expenses and costs. 5. 330 (ii) "Intangible property" means patents, patent applications, trade names, trademarks, service marks, copyrights 331

332 and similar types of intangible assets.

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

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

346 (v) "Related entity" means:

347 A stockholder who is an individual or a 1. 348 member of the stockholder's family, as defined in regulations 349 prescribed by the commissioner, if the stockholder and the members 350 of the stockholder's family own, directly, indirectly, 351 beneficially or constructively, in the aggregate, at least fifty 352 percent (50%) of the value of the taxpayer's outstanding stock; 353 2. A stockholder, or a stockholder's 354 partnership, limited liability company, estate, trust or 355 corporation, if the stockholder and the stockholder's 356 partnerships, limited liability companies, estates, trusts and corporations own, directly, indirectly, beneficially or 357

358 constructively, in the aggregate, at least fifty percent (50%) of 359 the value of the taxpayer's outstanding stock;

360 3. A corporation, or a party related to the 361 corporation in a manner that would require an attribution of stock 362 from the corporation to the party or from the party to the 363 corporation, if the taxpayer owns, directly, indirectly, 364 beneficially or constructively, at least fifty percent (50%) of 365 the value of the corporation's outstanding stock under regulation 366 prescribed by the commissioner;

367 4. Any entity or person which would be a
368 related member under this section if the taxpayer were considered
369 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.

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

379 (i) The related member directly or indirectly
380 paid, accrued or incurred such portion to a person during the same
381 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 H. B. 1733 PAGE 15 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.

398

(3) Individual nonbusiness deductions.

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

(i) The deduction for state income taxes paid or d04 other taxes allowed for federal purposes in lieu of state income taxes paid;

406 (ii) The deduction for gaming losses from gaming 407 establishments;

408 (iii) The deduction for taxes collected by 409 licensed gaming establishments pursuant to Section 27-7-901; H. B. 1733 PAGE 16 410 (iv) The deduction for taxes collected by gaming411 establishments pursuant to Section 27-7-903; and

412 (v) The deduction for medical expenses for the
413 provision of gender transition procedures as defined in Section 2
414 of House Bill No. 1125, 2023 Regular Session.

(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;

432 (iii) Three Thousand Four Hundred Dollars433 (\$3,400.00) in the case of a head of family; or

434 (iv) Two Thousand Three Hundred Dollars 435 (\$2,300.00) in the case of an individual who is not married. H. B. 1733 PAGE 17 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.

450 (4) Nothing in this section shall permit the same item to be451 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:

455 The payment(s) for such deductible expenses are (a) made with the grant or loan program of the Paycheck Protection 456 457 Program as authorized under (i) the Coronavirus Aid, Relief, and 458 Economic Security (CARES) Act and the Consolidated Appropriations 459 Act of 2021, (ii) the COVID-19 Economic Injury Disaster Loan 460 Program, (iii) the 2020 COVID-19 Mississippi Business Assistance 461 Act, (iv) the Rental Assistance Grant Program, (v) the Shuttered H. B. 1733 PAGE 18

462 Venue Operators Grant Program and Restaurant Revitalization Fund 463 authorized by the Economic Aid to Hard-Hit Small Businesses, 464 Nonprofits, and Venues Act, and amended by the federal American

465 Rescue Plan Act, and/or (vi) the Mississippi Agriculture

466 Stabilization Act; and

467 (b) Such deductible expenses shall be allowed as

468 deductions for federal income tax purposes.

469 **SECTION 2.** This act shall take effect and be in force from 470 and after January 1, 2023.

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, AS 2 AMENDED BY HOUSE BILL NO. 1125, 2023 REGULAR SESSION, TO REVISE 3 THE METHODS OF DEPRECIATION THAT MAY BE USED FOR CERTAIN 4 EXPENDITURES AND PROPERTY UNDER THE STATE INCOME TAX LAW; AND FOR 5 RELATED PURPOSES.

SS26\HB1733A.1J

Eugene S. Clarke Secretary of the Senate