

By: Senator(s) Minor

To: Finance

SENATE BILL NO. 3113

1 AN ACT TO LEVY A 3% TAX UPON AMOUNTS THAT ARE PAID TO PATRONS
2 BY GAMING ESTABLISHMENTS LOCATED IN THIS STATE THAT ARE NOT
3 LICENSED UNDER THE PROVISIONS OF THE GAMING CONTROL ACT; TO
4 PROVIDE THAT THE TAX SHALL BE COLLECTED BY THE GAMING
5 ESTABLISHMENTS AND REMITTED TO THE STATE TAX COMMISSION; TO AMEND
6 SECTION 27-7-15, MISSISSIPPI CODE OF 1972, TO EXCLUDE FROM THE
7 DEFINITION OF "GROSS INCOME" AMOUNTS THAT ARE SUBJECT TO SUCH TAX;
8 TO AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, TO PROVIDE
9 THAT INDIVIDUALS MAY NOT DEDUCT GAMING LOSSES PAID BY SUCH
10 ESTABLISHMENTS OR THE AMOUNT OF THE TAXES COLLECTED PURSUANT TO
11 THIS ACT; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** (1) There is hereby levied, assessed and shall
14 be collected a tax of three percent (3%) upon amounts that are
15 paid or credited to patrons by gaming establishments located in
16 this state that are not licensed under the provisions of the
17 Mississippi Gaming Control Act. The tax shall be collected by
18 such gaming establishments and remitted to the State Tax
19 Commission in the manner provided for by regulations promulgated
20 by the Chairman of the State Tax Commission.

21 (2) As used in this section, "amounts that are paid or
22 credited" means amounts or credits that are subject to the
23 withholding or reporting requirements of the Internal Revenue
24 Code.

25 (3) No credit shall be allowed under the Income Tax Law of
26 1952 for the tax collected by licensed gaming establishments
27 pursuant to this section.

28 **SECTION 2.** Section 27-7-15, Mississippi Code of 1972, is
29 amended as follows:

30 [From and after January 1, 2002, through June 30, 2003, this
31 section shall read as follows:]



27-7-15. (1) For the purposes of this article, except as otherwise provided, the term "gross income" means and includes the income of a taxpayer derived from salaries, wages, fees or compensation for service, of whatever kind and in whatever form paid, including income from governmental agencies and subdivisions thereof; or from professions, vocations, trades, businesses, commerce or sales, or renting or dealing in property, or reacquired property; also from annuities, interest, rents, dividends, securities, insurance premiums, reinsurance premiums, considerations for supplemental insurance contracts, or the transaction of any business carried on for gain or profit, or gains, or profits, and income derived from any source whatever and in whatever form paid. The amount of all such items of income shall be included in the gross income for the taxable year in which received by the taxpayer. The amount by which an eligible employee's salary is reduced pursuant to a salary reduction agreement authorized under Section 25-17-5 shall be excluded from the term "gross income" within the meaning of this article.

(2) In determining gross income for the purpose of this section, the following, under regulations prescribed by the commissioner, shall be applicable:

(a) **Dealers in property.** Federal rules, regulations and revenue procedures shall be followed with respect to installment sales unless a transaction results in the shifting of income from inside the state to outside the state.

(b) **Casual sales of property.**

(i) Prior to January 1, 2001, federal rules, regulations and revenue procedures shall be followed with respect to installment sales except they shall be applied and administered as if H.R. 3594, the Installment Tax Correction Act of 2000 of the 106th Congress, had not been enacted. This provision will generally affect taxpayers, reporting on the accrual method of accounting, entering into installment note agreements on or after



December 17, 1999. Any gain or profit resulting from the casual sale of property will be recognized in the year of sale.

(ii) From and after January 1, 2001, federal rules, regulations and revenue procedures shall be followed with respect to installment sales except as provided in this subparagraph (ii). Gain or profit from the casual sale of property shall be recognized in the year of sale. When a taxpayer recognizes gain on the casual sale of property in which the gain is deferred for federal income tax purposes, a taxpayer may elect to defer the payment of tax resulting from the gain as allowed and to the extent provided under regulations prescribed by the commissioner. If the payment of the tax is made on a deferred basis, the tax shall be computed based on the applicable rate for the income reported in the year the payment is made. Except as otherwise provided in subparagraph (iii) of this paragraph (b), deferring the payment of the tax shall not affect the liability for the tax. If at any time the installment note is sold, contributed, transferred or disposed of in any manner and for any purpose by the original note holder, or the original note holder is merged, liquidated, dissolved or withdrawn from this state, then all deferred tax payments under this section shall immediately become due and payable.

(iii) If the selling price of the property is reduced by any alteration in the terms of an installment note, including default by the purchaser, the gain to be recognized is recomputed based on the adjusted selling price in the same manner as for federal income tax purposes. The tax on this amount, less the previously paid tax on the recognized gain, is payable over the period of the remaining installments. If the tax on the previously recognized gain has been paid in full to this state, the return on which the payment was made may be amended for this purpose only. The statute of limitations in Section 27-7-49 shall not bar an amended return for this purpose.



(c) **Reserves of insurance companies.** In the case of insurance companies, any amounts in excess of the legally required reserves shall be included as gross income.

(d) **Affiliated companies or persons.** As regards sales, exchanges or payments for services from one to another of affiliated companies or persons or under other circumstances where the relation between the buyer and seller is such that gross proceeds from the sale or the value of the exchange or the payment for services are not indicative of the true value of the subject matter of the sale, exchange or payment for services, the commissioner shall prescribe uniform and equitable rules for determining the true value of the gross income, gross sales, exchanges or payment for services, or require consolidated returns of affiliates.

(e) **Alimony and separate maintenance payments.** The federal rules, regulations and revenue procedures in determining the deductibility and taxability of alimony payments shall be followed in this state.

(f) **Reimbursement for expenses of moving.** There shall be included in gross income (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence which is attributable to employment or self-employment.

(3) In the case of taxpayers other than residents, gross income includes gross income from sources within this state.

(4) The words "gross income" do not include the following items of income which shall be exempt from taxation under this article:

(a) The proceeds of life insurance policies and contracts paid upon the death of the insured. However, the income from the proceeds of such policies or contracts shall be included in the gross income.



131 (b) The amount received by the insured as a return of
132 premium or premiums paid by him under life insurance policies,
133 endowment, or annuity contracts, either during the term or at
134 maturity or upon surrender of the contract.

135 (c) The value of property acquired by gift, bequest,
136 devise or descent, but the income from such property shall be
137 included in the gross income.

138 (d) Interest upon the obligations of the United States
139 or its possessions, or securities issued under the provisions of
140 the Federal Farm Loan Act of July 17, 1916, or bonds issued by the
141 War Finance Corporation, or obligations of the State of
142 Mississippi or political subdivisions thereof.

143 (e) The amounts received through accident or health
144 insurance as compensation for personal injuries or sickness, plus
145 the amount of any damages received for such injuries or such
146 sickness or injuries, or through the War Risk Insurance Act, or
147 any law for the benefit or relief of injured or disabled members
148 of the military or naval forces of the United States.

149 (f) Income received by any religious denomination or by
150 any institution or trust for moral or mental improvements,
151 religious, Bible, tract, charitable, benevolent, fraternal,
152 missionary, hospital, infirmary, educational, scientific,
153 literary, library, patriotic, historical or cemetery purposes or
154 for two (2) or more of such purposes, if such income be used
155 exclusively for carrying out one or more of such purposes.

156 (g) Income received by a domestic corporation which is
157 "taxable in another state" as this term is defined in this
158 article, derived from business activity conducted outside this
159 state. Domestic corporations taxable both within and without the
160 state shall determine Mississippi income on the same basis as
161 provided for foreign corporations under the provisions of this
162 article.



(h) In case of insurance companies, there shall be excluded from gross income such portion of actual premiums received from an individual policyholder as is paid back or credited to or treated as an abatement of premiums of such policyholder within the taxable year.

(i) Income from dividends that has already borne a tax as dividend income under the provisions of this article, when such dividends may be specifically identified in the possession of the recipient.

(j) Amounts paid by the United States to a person as added compensation for hazardous duty pay as a member of the Armed Forces of the United States in a combat zone designated by Executive Order of the President of the United States.

(k) Amounts received as retirement allowances, pensions, annuities or optional retirement allowances paid under the federal Social Security Act, the Railroad Retirement Act, the Federal Civil Service Retirement Act, or any other retirement system of the United States government, retirement allowances paid under the Mississippi Public Employees' Retirement System, Mississippi Highway Safety Patrol Retirement System or any other retirement system of the State of Mississippi or any political subdivision thereof. The exemption allowed under this paragraph (k) shall be available to the spouse or other beneficiary at the death of the primary retiree.

(l) Amounts received as retirement allowances, pensions, annuities or optional retirement allowances paid by any public or governmental retirement system not designated in paragraph (k) or any private retirement system or plan of which the recipient was a member at any time during the period of his employment. Amounts received as a distribution under a Roth Individual Retirement Account shall be treated in the same manner as provided under the Internal Revenue Code of 1986, as amended. The exemption allowed under this paragraph (l) shall be available



to the spouse or other beneficiary at the death of the primary retiree.

(m) Compensation not to exceed the aggregate sum of Five Thousand Dollars (\$5,000.00) for any taxable year received by a member of the National Guard or Reserve Forces of the United States as payment for inactive duty training, active duty training and state active duty.

(n) Compensation received for active service as a member below the grade of commissioned officer and so much of the compensation as does not exceed the aggregate sum of Five Hundred Dollars (\$500.00) per month received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such members of the Armed Forces (i) served in a combat zone as designated by Executive Order of the President of the United States; or (ii) was hospitalized as a result of wounds, disease or injury incurred while serving in such combat zone.

(o) The proceeds received from federal and state forestry incentives programs.

(p) The amount representing the difference between the increase of gross income derived from sales for export outside the United States as compared to the preceding tax year wherein gross income from export sales was highest, and the net increase in expenses attributable to such increased exports. In the absence of direct accounting the ratio of net profits to total sales may be applied to the increase in export sales. This paragraph (p) shall only apply to businesses located in this state engaging in the international export of Mississippi goods and services. Such goods or services shall have at least fifty percent (50%) of value added at a location in Mississippi.

(q) Amounts paid by the federal government for the construction of soil conservation systems as required by a conservation plan adopted pursuant to 16 USCS 3801 et seq.



229 (r) The amount deposited in a medical savings account,
230 and any interest accrued thereon, that is a part of a medical
231 savings account program as specified in the Medical Savings
232 Account Act under Sections 71-9-1 through 71-9-9; provided,
233 however, that any amount withdrawn from such account for purposes
234 other than paying eligible medical expense or to procure health
235 coverage, shall be included in gross income.

236 (s) Amounts paid by the Mississippi Soil and Water
237 Conservation Commission from the Mississippi Soil and Water
238 Cost-Share Program for the installation of water quality best
239 management practices.

240 (t) Dividends received by a holding corporation, as
241 defined in Section 27-13-1, from a subsidiary corporation, as
242 defined in Section 27-13-1.

243 (u) Interest, dividends, gains or income of any kind on
244 any account in the Mississippi Affordable College Savings Trust
245 Fund, as established in Sections 37-155-101 through 37-155-125, to
246 the extent that such amounts remain on deposit in the MACS Trust
247 Fund or are withdrawn pursuant to a qualified withdrawal, as
248 defined in Section 37-155-105.

249 (v) Interest, dividends or gains accruing on the
250 payments made pursuant to a prepaid tuition contract, as provided
251 for in Section 37-155-17.

252 (w) Income resulting from transactions with a related
253 member where the related member subject to tax under this chapter
254 was required to, and did in fact, add back the expense of such
255 transactions as required by Section 27-7-17(2). Under no
256 circumstances may the exclusion from income exceed the deduction
257 add-back of the related member, nor shall the exclusion apply to
258 any income otherwise excluded under this chapter.

259 (x) Amounts that are subject to the tax levied pursuant
260 to Section 27-7-901 and Section 1 of Senate Bill No. 3113, 2002



Regular Session, and are paid to patrons by gaming establishments * * *.

(5) Prisoners of war, missing in action-taxable status.

(a) **Members of the Armed Forces.** Gross income does not include compensation received for active service as a member of the Armed Forces of the United States for any month during any part of which such member is in a missing status, as defined in paragraph (d) of this subsection, during the Vietnam Conflict as a result of such conflict.

(b) **Civilian employees.** Gross income does not include compensation received for active service as an employee for any month during any part of which such employee is in a missing status during the Vietnam Conflict as a result of such conflict.

(c) **Period of conflict.** For the purpose of this subsection, the Vietnam Conflict began February 28, 1961, and ends on the date designated by the President by Executive Order as the date of the termination of combatant activities in Vietnam. For the purpose of this subsection, an individual is in a missing status as a result of the Vietnam Conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam. "Southeast Asia" as used in this paragraph is defined to include Cambodia, Laos, Thailand and waters adjacent thereto.

(d) "Missing status" means the status of an employee or member of the Armed Forces who is in active service and is officially carried or determined to be absent in a status of (i) missing; (ii) missing in action; (iii) interned in a foreign country; (iv) captured, beleaguered or besieged by a hostile force; or (v) detained in a foreign country against his will; but does not include the status of an employee or member of the Armed Forces for a period during which he is officially determined to be absent from his post of duty without authority.



(e) "Active service" means active federal service by an employee or member of the Armed Forces of the United States in an active duty status.

(f) "Employee" means one who is a citizen or national of the United States or an alien admitted to the United States for permanent residence and is a resident of the State of Mississippi and is employed in or under a federal executive agency or department of the Armed Forces.

(g) "Compensation" means (i) basic pay; (ii) special pay; (iii) incentive pay; (iv) basic allowance for quarters; (v) basic allowance for subsistence; and (vi) station per diem allowances for not more than ninety (90) days.

(h) If refund or credit of any overpayment of tax for any taxable year resulting from the application of subsection (5) of this section is prevented by the operation of any law or rule of law, such refund or credit of such overpayment of tax may, nevertheless, be made or allowed if claim therefor is filed with the State Tax Commission within three (3) years after the date of the enactment of this subsection.

(i) The provisions of this subsection shall be effective for taxable years ending on or after February 28, 1961.

(6) A shareholder of an S corporation, as defined in Section 27-8-3(1)(g), shall take into account the income, loss, deduction or credit of the S corporation only to the extent provided in Section 27-8-7(2).

[From and after July 1, 2003, this section shall read as follows:]

27-7-15. (1) For the purposes of this article, except as otherwise provided, the term "gross income" means and includes the income of a taxpayer derived from salaries, wages, fees or compensation for service, of whatever kind and in whatever form paid, including income from governmental agencies and subdivisions thereof; or from professions, vocations, trades, businesses,



327 commerce or sales, or renting or dealing in property, or
328 reacquired property; also from annuities, interest, rents,
329 dividends, securities, insurance premiums, reinsurance premiums,
330 considerations for supplemental insurance contracts, or the
331 transaction of any business carried on for gain or profit, or
332 gains, or profits, and income derived from any source whatever and
333 in whatever form paid. The amount of all such items of income
334 shall be included in the gross income for the taxable year in
335 which received by the taxpayer. The amount by which an eligible
336 employee's salary is reduced pursuant to a salary reduction
337 agreement authorized under Section 25-17-5 shall be excluded from
338 the term "gross income" within the meaning of this article.

339 (2) In determining gross income for the purpose of this
340 section, the following, under regulations prescribed by the
341 commissioner, shall be applicable:

342 (a) **Dealers in property.** Federal rules, regulations
343 and revenue procedures shall be followed with respect to
344 installment sales.

345 (b) **Casual sales of property.** Federal rules,
346 regulations and revenue procedures shall be followed with respect
347 to installment sales.

348 (i) The term "installment sale" means a
349 disposition of property where at least one (1) payment is to be
350 received after the close of the taxable year in which the
351 disposition occurs.

352 (ii) The term "installment method" means a method
353 under which the income recognized for any taxable year from the
354 disposition is that proportion of the payments received in that
355 year which the gross profit (realized or to be realized when
356 payment is completed) bears to the total contract price.

357 (c) **Reserves of insurance companies.** In the case of
358 insurance companies, any amounts in excess of the legally required
359 reserves shall be included as gross income.



360 (d) **Affiliated companies or persons.** As regards sales,
361 exchanges or payments for services from one to another of
362 affiliated companies or persons or under other circumstances where
363 the relation between the buyer and seller is such that gross
364 proceeds from the sale or the value of the exchange or the payment
365 for services are not indicative of the true value of the subject
366 matter of the sale, exchange or payment for services, the
367 commissioner shall prescribe uniform and equitable rules for
368 determining the true value of the gross income, gross sales,
369 exchanges or payment for services, or require consolidated returns
370 of affiliates.

371 (e) **Alimony and separate maintenance payments.** The
372 federal rules, regulations and revenue procedures in determining
373 the deductibility and taxability of alimony payments shall be
374 followed in this state.

375 (f) **Reimbursement for expenses of moving.** There shall
376 be included in gross income (as compensation for services) any
377 amount received or accrued, directly or indirectly, by an
378 individual as a payment for or reimbursement of expenses of moving
379 from one residence to another residence which is attributable to
380 employment or self-employment.

381 (3) In the case of taxpayers other than residents, gross
382 income includes gross income from sources within this state.

383 (4) The words "gross income" do not include the following
384 items of income which shall be exempt from taxation under this
385 article:

386 (a) The proceeds of life insurance policies and
387 contracts paid upon the death of the insured. However, the income
388 from the proceeds of such policies or contracts shall be included
389 in the gross income.

390 (b) The amount received by the insured as a return of
391 premium or premiums paid by him under life insurance policies,



endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract.

(c) The value of property acquired by gift, bequest, devise or descent, but the income from such property shall be included in the gross income.

(d) Interest upon the obligations of the United States or its possessions, or securities issued under the provisions of the Federal Farm Loan Act of July 17, 1916, or bonds issued by the War Finance Corporation, or obligations of the State of Mississippi or political subdivisions thereof.

(e) The amounts received through accident or health insurance as compensation for personal injuries or sickness, plus the amount of any damages received for such injuries or such sickness or injuries, or through the War Risk Insurance Act, or any law for the benefit or relief of injured or disabled members of the military or naval forces of the United States.

(f) Income received by any religious denomination or by any institution or trust for moral or mental improvements, religious, Bible, tract, charitable, benevolent, fraternal, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, historical or cemetery purposes or for two (2) or more of such purposes, if such income be used exclusively for carrying out one or more of such purposes.

(g) Income received by a domestic corporation which is "taxable in another state" as this term is defined in this article, derived from business activity conducted outside this state. Domestic corporations taxable both within and without the state shall determine Mississippi income on the same basis as provided for foreign corporations under the provisions of this article.

(h) In case of insurance companies, there shall be excluded from gross income such portion of actual premiums received from an individual policyholder as is paid back or



425 credited to or treated as an abatement of premiums of such
426 policyholder within the taxable year.

427 (i) Income from dividends that has already borne a tax
428 as dividend income under the provisions of this article, when such
429 dividends may be specifically identified in the possession of the
430 recipient.

431 (j) Amounts paid by the United States to a person as
432 added compensation for hazardous duty pay as a member of the Armed
433 Forces of the United States in a combat zone designated by
434 Executive Order of the President of the United States.

435 (k) Amounts received as retirement allowances,
436 pensions, annuities or optional retirement allowances paid under
437 the federal Social Security Act, the Railroad Retirement Act, the
438 Federal Civil Service Retirement Act, or any other retirement
439 system of the United States government, retirement allowances paid
440 under the Mississippi Public Employees' Retirement System,
441 Mississippi Highway Safety Patrol Retirement System or any other
442 retirement system of the State of Mississippi or any political
443 subdivision thereof. The exemption allowed under this paragraph
444 (k) shall be available to the spouse or other beneficiary at the
445 death of the primary retiree.

446 (l) Amounts received as retirement allowances,
447 pensions, annuities or optional retirement allowances paid by any
448 public or governmental retirement system not designated in
449 paragraph (k) or any private retirement system or plan of which
450 the recipient was a member at any time during the period of his
451 employment. Amounts received as a distribution under a Roth
452 individual retirement account shall be treated in the same manner
453 as provided under the Internal Revenue Code of 1986, as amended.
454 The exemption allowed under this paragraph (l) shall be available
455 to the spouse or other beneficiary at the death of the primary
456 retiree.



(m) Compensation not to exceed the aggregate sum of Five Thousand Dollars (\$5,000.00) for any taxable year received by a member of the National Guard or Reserve Forces of the United States as payment for inactive duty training, active duty training and state active duty.

(n) Compensation received for active service as a member below the grade of commissioned officer and so much of the compensation as does not exceed the aggregate sum of Five Hundred Dollars (\$500.00) per month received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such members of the Armed Forces (i) served in a combat zone as designated by Executive Order of the President of the United States; or (ii) was hospitalized as a result of wounds, disease or injury incurred while serving in such combat zone.

(o) The proceeds received from federal and state forestry incentives programs.

(p) The amount representing the difference between the increase of gross income derived from sales for export outside the United States as compared to the preceding tax year wherein gross income from export sales was highest, and the net increase in expenses attributable to such increased exports. In the absence of direct accounting the ratio of net profits to total sales may be applied to the increase in export sales. This paragraph (p) shall only apply to businesses located in this state engaging in the international export of Mississippi goods and services. Such goods or services shall have at least fifty percent (50%) of value added at a location in Mississippi.

(q) Amounts paid by the federal government for the construction of soil conservation systems as required by a conservation plan adopted pursuant to 16 USCS 3801 et seq.

(r) The amount deposited in a medical savings account, and any interest accrued thereon, that is a part of a medical



490 savings account program as specified in the Medical Savings
491 Account Act under Sections 71-9-1 through 71-9-9; provided,
492 however, that any amount withdrawn from such account for purposes
493 other than paying eligible medical expense or to procure health
494 coverage, shall be included in gross income.

495 (s) Amounts paid by the Mississippi Soil and Water
496 Conservation Commission from the Mississippi Soil and Water
497 Cost-Share Program for the installation of water quality best
498 management practices.

499 (t) Dividends received by a holding corporation, as
500 defined in Section 27-13-1, from a subsidiary corporation, as
501 defined in Section 27-13-1.

502 (u) Interest, dividends, gains or income of any kind on
503 any account in the Mississippi Affordable College Savings Trust
504 Fund, as established in Sections 37-155-101 through 37-155-125, to
505 the extent that such amounts remain on deposit in the MACS Trust
506 Fund or are withdrawn pursuant to a qualified withdrawal, as
507 defined in Section 37-155-105.

508 (v) Interest, dividends or gains accruing on the
509 payments made pursuant to a prepaid tuition contract, as provided
510 for in Section 37-155-17.

511 (w) Amounts that are subject to the tax levied pursuant
512 to Section 27-7-901 and Section 1 of Senate Bill No. 3113, 2002
513 Regular Session, and are paid to patrons by gaming
514 establishments * * *.

515 (5) Prisoners of war, missing in action-taxable status.

516 (a) **Members of the Armed Forces.** Gross income does not
517 include compensation received for active service as a member of
518 the Armed Forces of the United States for any month during any
519 part of which such member is in a missing status, as defined in
520 paragraph (d) of this subsection, during the Vietnam Conflict as a
521 result of such conflict.



522 (b) **Civilian employees.** Gross income does not include
523 compensation received for active service as an employee for any
524 month during any part of which such employee is in a missing
525 status during the Vietnam Conflict as a result of such conflict.

526 (c) **Period of conflict.** For the purpose of this
527 subsection, the Vietnam Conflict began February 28, 1961, and ends
528 on the date designated by the President by Executive Order as the
529 date of the termination of combatant activities in Vietnam. For
530 the purpose of this subsection, an individual is in a missing
531 status as a result of the Vietnam Conflict if immediately before
532 such status began he was performing service in Vietnam or was
533 performing service in Southeast Asia in direct support of military
534 operations in Vietnam. "Southeast Asia" as used in this paragraph
535 is defined to include Cambodia, Laos, Thailand and waters adjacent
536 thereto.

537 (d) "Missing status" means the status of an employee or
538 member of the Armed Forces who is in active service and is
539 officially carried or determined to be absent in a status of (i)
540 missing; (ii) missing in action; (iii) interned in a foreign
541 country; (iv) captured, beleaguered or besieged by a hostile
542 force; or (v) detained in a foreign country against his will; but
543 does not include the status of an employee or member of the Armed
544 Forces for a period during which he is officially determined to be
545 absent from his post of duty without authority.

546 (e) "Active service" means active federal service by an
547 employee or member of the Armed Forces of the United States in an
548 active duty status.

549 (f) "Employee" means one who is a citizen or national
550 of the United States or an alien admitted to the United States for
551 permanent residence and is a resident of the State of Mississippi
552 and is employed in or under a federal executive agency or
553 department of the Armed Forces.



(g) "Compensation" means (i) basic pay; (ii) special pay; (iii) incentive pay; (iv) basic allowance for quarters; (v) basic allowance for subsistence; and (vi) station per diem allowances for not more than ninety (90) days.

(h) If refund or credit of any overpayment of tax for any taxable year resulting from the application of subsection (5) of this section is prevented by the operation of any law or rule of law, such refund or credit of such overpayment of tax may, nevertheless, be made or allowed if claim therefor is filed with the State Tax Commission within three (3) years after the date of the enactment of this subsection.

(i) The provisions of this subsection shall be effective for taxable years ending on or after February 28, 1961.

(6) A shareholder of an S corporation, as defined in Section 27-8-3(1)(g), shall take into account the income, loss, deduction or credit of the S corporation only to the extent provided in Section 27-8-7(2).

SECTION 3. Section 27-7-17, Mississippi Code of 1972, is amended as follows:

[From and after January 1, 2002, through June 30, 2003, 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.

(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 subsection (3)(a) of this section for individuals, contributions or gifts made by corporations within the taxable



653 year to corporations, organizations, associations or institutions,
654 including Community Chest funds, foundations and trusts created
655 solely and exclusively for religious, charitable, scientific or
656 educational purposes, or for the prevention of cruelty to children
657 or animals, no part of the net earnings of which inure to the
658 benefit of any private stockholder or individual. This deduction
659 shall be allowed in an amount not to exceed twenty percent (20%)
660 of the net income. Such contributions or gifts shall be allowable
661 as deductions only if verified under rules and regulations
662 prescribed by the commissioner, with the approval of the Governor.
663 Contributions made in any form other than cash shall be allowed as
664 a deduction, subject to the limitations herein provided, in an
665 amount equal to the actual market value of the contributions at
666 the time the contribution is actually made and consummated.

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

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

675 (k) **Contributions to employee pension plans.**
676 Contributions made by an employer to a plan or a trust forming
677 part of a pension plan, stock bonus plan, disability or
678 death-benefit plan, or profit-sharing plan of such employer for
679 the exclusive benefit of some or all of his, their, or its
680 employees, or their beneficiaries, shall be deductible from his,
681 their, or its income only to the extent that, and for the taxable
682 year in which, the contribution is deductible for federal income
683 tax purposes under the Internal Revenue Code of 1986 and any other
684 provisions of similar purport in the Internal Revenue Laws of the



685 United States, and the rules, regulations, rulings and
686 determinations promulgated thereunder, provided that:

687 (i) The plan or trust be irrevocable.

688 (ii) The plan or trust constitute a part of a
689 pension plan, stock bonus plan, disability or death-benefit plan,
690 or profit-sharing plan for the exclusive benefit of some or all of
691 the employer's employees and/or officers, or their beneficiaries,
692 for the purpose of distributing the corpus and income of the plan
693 or trust to such employees and/or officers, or their
694 beneficiaries.

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

698 Contributions to all plans or to all trusts of real or
699 personal property (or real and personal property combined) or to
700 insured plans created under a retirement plan for which provision
701 has been made under the laws of the United States of America,
702 making such contributions deductible from income for federal
703 income tax purposes, shall be deductible only to the same extent
704 under the Income Tax Laws of the State of Mississippi.

705 (1) Net operating loss carrybacks and carryovers. A
706 net operating loss for any taxable year ending after December 31,
707 1993, and taxable years thereafter, shall be a net operating loss
708 carryback to each of the three (3) taxable years preceding the
709 taxable year of the loss. If the net operating loss for any
710 taxable year is not exhausted by carrybacks to the three (3)
711 taxable years preceding the taxable year of the loss, then there
712 shall be a net operating loss carryover to each of the fifteen
713 (15) taxable years following the taxable year of the loss
714 beginning with any taxable year after December 31, 1991.

715 For any taxable year ending after December 31, 1997, the
716 period for net operating loss carrybacks and net operating loss
717 carryovers shall be the same as those established by the Internal



718 Revenue Code and the rules, regulations, rulings and
719 determinations promulgated thereunder.

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

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

726 (ii) No personal exemption deduction shall be
727 allowed.

728 (iii) Allowable deductions which are not
729 attributable to taxpayer's trade or business shall be allowed only
730 to the extent of the amount of gross income not derived from such
731 trade or business.

732 Any taxpayer entitled to a carryback period as provided by
733 this paragraph may elect to relinquish the entire carryback period
734 with respect to a net operating loss for any taxable year ending
735 after December 31, 1991. The election shall be made in the manner
736 prescribed by the State Tax Commission and shall be made by the
737 due date, including extensions of time, for filing the taxpayer's
738 return for the taxable year of the net operating loss for which
739 the election is to be in effect. The election, once made for any
740 taxable year, shall be irrevocable for that taxable year.

741 (m) **Amortization of pollution or environmental control**
742 **facilities.** Allowance of deduction. Every taxpayer, at his
743 election, shall be entitled to a deduction for pollution or
744 environmental control facilities to the same extent as that
745 allowed under the Internal Revenue Code and the rules,
746 regulations, rulings and determinations promulgated thereunder.

747 (n) **Dividend distributions - real estate investment**
748 **trusts.** "Real estate investment trust" (hereinafter referred to
749 as REIT) shall have the meaning ascribed to such term in Section
750 856 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.

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



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

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

786 1. Expenses, losses and costs for, related

787 to, or in connection directly or indirectly with the direct or

788 indirect acquisition, use, maintenance or management, ownership,

789 sale, exchange or any other disposition of intangible property to

790 the extent such amounts are allowed as deductions or costs in

791 determining taxable income under this chapter;

792 2. Expenses or losses related to or incurred

793 in connection directly or indirectly with factoring transactions

794 or discounting transactions;

795 3. Royalty, patent, technical and copyright

796 fees;

797 4. Licensing fees; and

798 5. Other similar expenses and costs.

799 (ii) "Intangible property" means patents, patent

800 applications, trade names, trademarks, service marks, copyrights

801 and similar types of intangible assets.

802 (iii) "Interest expenses and cost" means amounts

803 directly or indirectly allowed as deductions for purposes of

804 determining taxable income under this chapter to the extent such

805 interest expenses and costs are directly or indirectly for,

806 related to, or in connection with the direct or indirect

807 acquisition maintenance, management, ownership, sale, exchange or

808 disposition of intangible property.

809 (iv) "Related member" means an entity or person

810 that, with respect to the taxpayer during all or any portion of

811 the taxable year, is a related entity, a component member as

812 defined in the Internal Revenue Code, or is an entity or a person

813 to or from whom there is attribution of stock ownership in

814 accordance with Section 1563(e) of the Internal Revenue Code.

815 (v) "Related entity" means:



816 1. A stockholder who is an individual or a
817 member of the stockholder's family, as defined in regulations
818 prescribed by the commissioner, if the stockholder and the members
819 of the stockholder's family own, directly, indirectly,
820 beneficially or constructively, in the aggregate, at least fifty
821 percent (50%) of the value of the taxpayer's outstanding stock;

822 2. A stockholder, or a stockholder's
823 partnership, limited liability company, estate, trust or
824 corporation, if the stockholder and the stockholder's
825 partnerships, limited liability companies, estates, trusts and
826 corporations own, directly, indirectly, beneficially or
827 constructively, in the aggregate, at least fifty percent (50%) of
828 the value of the taxpayer's outstanding stock;

829 3. A corporation, or a party related to the
830 corporation in a manner that would require an attribution of stock
831 from the corporation to the party or from the party to the
832 corporation, if the taxpayer owns, directly, indirectly,
833 beneficially or constructively, at least fifty percent (50%) of
834 the value of the corporation's outstanding stock under regulation
835 prescribed by the commissioner;

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

839 (b) In computing net income, a taxpayer shall add back
840 otherwise deductible interest expenses and costs and intangible
841 expenses and costs directly or indirectly paid, accrued to or
842 incurred, in connection directly or indirectly with one or more
843 direct or indirect transactions with one or more related members.

844 (c) The adjustments required by this subsection shall
845 not apply to such portion of interest expenses and costs and
846 intangible expenses and costs that the taxpayer can establish
847 meets one (1) of the following:



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

851 (ii) The transaction giving rise to the interest
852 expenses and costs or intangible expenses and costs between the
853 taxpayer and related member was done primarily for a valid
854 business purpose other than the avoidance of taxes, and the
855 related member is not primarily engaged in the acquisition, use,
856 maintenance or management, ownership, sale, exchange or any other
857 disposition of intangible property.

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

862 (e) The commissioner may prescribe such regulations as
863 necessary or appropriate to carry out the purposes of this
864 subsection, including, but not limited to, clarifying definitions
865 of terms, rules of stock attribution, factoring and discount
866 transactions.

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

868 (a) The amount allowable for individual nonbusiness
869 itemized deductions for federal income tax purposes where the
870 individual is eligible to elect, for the taxable year, to itemize
871 deductions on his federal return except the following:

872 (i) The deduction for state income taxes paid;

873 (ii) The deduction for gaming losses from gaming
874 establishments * * *;

875 (iii) The deduction for taxes collected by * * *
876 gaming establishments pursuant to Section 27-7-901 and Section 1
877 of Senate Bill No. 3113, 2002 Regular Session.

878 (b) In lieu of the individual nonbusiness itemized
879 deductions authorized in paragraph (a), for all purposes other
880 than ordinary and necessary expenses paid or incurred during the



881 taxable year in carrying on any trade or business, an optional
882 standard deduction of:

883 (i) Three Thousand Four Hundred Dollars
884 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
885 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
886 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
887 in the case of married individuals filing a joint or combined
888 return;

889 (ii) One Thousand Seven Hundred Dollars
890 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
891 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
892 Three Hundred Dollars (\$2,300.00) for each calendar year
893 thereafter in the case of married individuals filing separate
894 returns;

895 (iii) Three Thousand Four Hundred Dollars
896 (\$3,400.00) in the case of a head of family; or

897 (iv) Two Thousand Three Hundred Dollars
898 (\$2,300.00) in the case of an individual who is not married.

899 In the case of a husband and wife living together, having
900 separate incomes, and filing combined returns, the standard
901 deduction authorized may be divided in any manner they choose. In
902 the case of separate returns by a husband and wife, the standard
903 deduction shall not be allowed to either if the taxable income of
904 one of the spouses is determined without regard to the standard
905 deduction.

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



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

[From and after July 1, 2003, 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)(4)(H).

(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 (2)(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.



979 (f) **Depreciation.** A reasonable allowance for
980 exhaustion, wear and tear of property used in the trade or
981 business, or rental property, and depreciation upon buildings
982 based upon their reasonable value as of March 16, 1912, if
983 acquired prior thereto, and upon cost if acquired subsequent to
984 that date.

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

992 (h) **Contributions or gifts.** Except as otherwise
993 provided in subsection (2)(a) of this section for individuals,
994 contributions or gifts made by corporations within the taxable
995 year to corporations, organizations, associations or institutions,
996 including Community Chest funds, foundations and trusts created
997 solely and exclusively for religious, charitable, scientific or
998 educational purposes, or for the prevention of cruelty to children
999 or animals, no part of the net earnings of which inure to the
1000 benefit of any private stockholder or individual. This deduction
1001 shall be allowed in an amount not to exceed twenty percent (20%)
1002 of the net income. Such contributions or gifts shall be allowable
1003 as deductions only if verified under rules and regulations
1004 prescribed by the commissioner, with the approval of the Governor.
1005 Contributions made in any form other than cash shall be allowed as
1006 a deduction, subject to the limitations herein provided, in an
1007 amount equal to the actual market value of the contributions at
1008 the time the contribution is actually made and consummated.

1009 (i) **Reserve funds - insurance companies.** In the case
1010 of insurance companies the net additions required by law to be
1011 made within the taxable year to reserve funds when such reserve



1012 funds are maintained for the purpose of liquidating policies at
1013 maturity.

1014 (j) **Annuity income.** The sums, other than dividends,
1015 paid within the taxpayer year on policy or annuity contracts when
1016 such income has been included in gross income.

1017 (k) **Contributions to employee pension plans.**
1018 Contributions made by an employer to a plan or a trust forming
1019 part of a pension plan, stock bonus plan, disability or
1020 death-benefit plan, or profit-sharing plan of such employer for
1021 the exclusive benefit of some or all of his, their, or its
1022 employees, or their beneficiaries, shall be deductible from his,
1023 their, or its income only to the extent that, and for the taxable
1024 year in which, the contribution is deductible for federal income
1025 tax purposes under the Internal Revenue Code of 1986 and any other
1026 provisions of similar purport in the Internal Revenue Laws of the
1027 United States, and the rules, regulations, rulings and
1028 determinations promulgated thereunder, provided that:

1029 (i) The plan or trust be irrevocable.

1030 (ii) The plan or trust constitute a part of a
1031 pension plan, stock bonus plan, disability or death-benefit plan,
1032 or profit-sharing plan for the exclusive benefit of some or all of
1033 the employer's employees and/or officers, or their beneficiaries,
1034 for the purpose of distributing the corpus and income of the plan
1035 or trust to such employees and/or officers, or their
1036 beneficiaries.

1037 (iii) No part of the corpus or income of the plan
1038 or trust can be used for purposes other than for the exclusive
1039 benefit of employees and/or officers, or their beneficiaries.

1040 Contributions to all plans or to all trusts of real or
1041 personal property (or real and personal property combined) or to
1042 insured plans created under a retirement plan for which provision
1043 has been made under the laws of the United States of America,
1044 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.

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



1078 prescribed by the State Tax Commission and shall be made by the
1079 due date, including extensions of time, for filing the taxpayer's
1080 return for the taxable year of the net operating loss for which
1081 the election is to be in effect. The election, once made for any
1082 taxable year, shall be irrevocable for that taxable year.

1083 (m) **Amortization of pollution or environmental control**
1084 **facilities.** Allowance of deduction. Every taxpayer, at his
1085 election, shall be entitled to a deduction for pollution or
1086 environmental control facilities to the same extent as that
1087 allowed under the Internal Revenue Code and the rules,
1088 regulations, rulings and determinations promulgated thereunder.

1089 (n) **Dividend distributions - real estate investment**
1090 **trusts.** "Real estate investment trust" (hereinafter referred to
1091 as REIT) shall have the meaning ascribed to such term in Section
1092 856 of the federal Internal Revenue Code of 1986, as amended. A
1093 REIT is allowed a dividend distributed deduction if the dividend
1094 distributions meet the requirements of Section 857 or are
1095 otherwise deductible under Section 858 or 860, federal Internal
1096 Revenue Code of 1986, as amended. In addition:

1097 (i) A dividend distributed deduction shall only be
1098 allowed for dividends paid by a publicly traded REIT. A qualified
1099 REIT subsidiary shall be allowed a dividend distributed deduction
1100 if its owner is a publicly traded REIT.

1101 (ii) Income generated from real estate contributed
1102 or sold to a REIT by a shareholder or related party shall not give
1103 rise to a dividend distributed deduction, unless the shareholder
1104 or related party would have received the dividend distributed
1105 deduction under this chapter.

1106 (iii) A holding corporation receiving a dividend
1107 from a REIT shall not be allowed the deduction in Section
1108 27-7-15(4)(t).

1109 (iv) Any REIT not allowed the dividend distributed
1110 deduction in the federal Internal Revenue Code of 1986, as



1111 amended, shall not be allowed a dividend distributed deduction
1112 under this chapter.

1113 The commissioner is authorized to promulgate rules and
1114 regulations consistent with the provisions in Section 269 of the
1115 federal Internal Revenue Code of 1986, as amended, so as to
1116 prevent the evasion or avoidance of state income tax.

1117 (ο) **Contributions to college savings trust fund**
1118 **accounts.** Contributions or payments to a Mississippi Affordable
1119 College Savings Program account are deductible as provided under
1120 Section 37-155-113. Payments made under a prepaid tuition
1121 contract entered into under the Mississippi Prepaid Affordable
1122 College Tuition Program are deductible as provided under Section
1123 37-155-17.

1124 (2) **Individual nonbusiness deductions.**

1125 (a) The amount allowable for individual nonbusiness
1126 itemized deductions for federal income tax purposes where the
1127 individual is eligible to elect, for the taxable year, to itemize
1128 deductions on his federal return except the following:

1129 (i) The deduction for state income taxes paid;

1130 (ii) The deduction for gaming losses from gaming
1131 establishments * * *;

1132 (iii) The deduction for taxes collected by * * *
1133 gaming establishments pursuant to Section 27-7-901 and Section 1
1134 of Senate Bill No. 3113, 2002 Regular Session.

1135 (b) In lieu of the individual nonbusiness itemized
1136 deductions authorized in paragraph (a), for all purposes other
1137 than ordinary and necessary expenses paid or incurred during the
1138 taxable year in carrying on any trade or business, an optional
1139 standard deduction of:

1140 (i) Three Thousand Four Hundred Dollars

1141 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
1142 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
1143 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter



1144 in the case of married individuals filing a joint or combined
1145 return;

1146 (ii) One Thousand Seven Hundred Dollars
1147 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
1148 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
1149 Three Hundred Dollars (\$2,300.00) for each calendar year
1150 thereafter in the case of married individuals filing separate
1151 returns;

1152 (iii) Three Thousand Four Hundred Dollars
1153 (\$3,400.00) in the case of a head of family; or

1154 (iv) Two Thousand Three Hundred Dollars
1155 (\$2,300.00) in the case of an individual who is not married.

1156 In the case of a husband and wife living together, having
1157 separate incomes, and filing combined returns, the standard
1158 deduction authorized may be divided in any manner they choose. In
1159 the case of separate returns by a husband and wife, the standard
1160 deduction shall not be allowed to either if the taxable income of
1161 one of the spouses is determined without regard to the standard
1162 deduction.

1163 (c) A nonresident individual shall be allowed the same
1164 individual nonbusiness deductions as are authorized for resident
1165 individuals in paragraph (a) or (b) of this subsection; however,
1166 the nonresident individual is entitled only to that proportion of
1167 the individual nonbusiness deductions as his net income from
1168 sources within the State of Mississippi bears to his total or
1169 entire net income from all sources.

1170 (3) Nothing in this section shall permit the same item to be
1171 deducted more than once, either in fact or in effect.

1172 **SECTION 4.** This act shall take effect and be in force from
1173 and after January 1, 2002.

