

By: Senator(s) Minor

To: Finance

COMMITTEE SUBSTITUTE
FOR
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 and assessed upon
14 patrons of gaming establishments located in this state that are
15 not licensed under the provisions of the Mississippi Gaming
16 Control Act, a tax of three percent (3%) of the amounts that are
17 paid or credited to such patrons by the gaming establishment,
18 which tax is the same in kind and rate as has heretofore been
19 imposed pursuant to Section 27-7-901 upon the patrons of gaming
20 establishments which are licensed under the Mississippi Gaming
21 Control Act. The legal incidence and duty to pay such taxes shall
22 fall upon the patron. The assessment of such tax is subject to
23 any exemptions as may exist under federal or state law. The State
24 Tax Commission may enter into tax collection agreements regarding
25 this tax.

26 (2) As used in this section, "amounts that are paid or
27 credited" means amounts or credits that are subject to the
28 withholding or reporting requirements of the Internal Revenue
29 Code.



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

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

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

27-7-15. (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.**



63 (i) Prior to January 1, 2001, federal rules,
64 regulations and revenue procedures shall be followed with respect
65 to installment sales except they shall be applied and administered
66 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the
67 106th Congress, had not been enacted. This provision will
68 generally affect taxpayers, reporting on the accrual method of
69 accounting, entering into installment note agreements on or after
70 December 17, 1999. Any gain or profit resulting from the casual
71 sale of property will be recognized in the year of sale.

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

92 (iii) If the selling price of the property is
93 reduced by any alteration in the terms of an installment note,
94 including default by the purchaser, the gain to be recognized is
95 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.

(b) The amount received by the insured as a return of 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.



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

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

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

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

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

192 (l) Amounts received as retirement allowances,
193 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.

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

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

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

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

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

(w) Income resulting from transactions with a related member where the related member subject to tax under this chapter was required to, and did in fact, add back the expense of such



transactions as required by Section 27-7-17(2). Under no circumstances may the exclusion from income exceed the deduction add-back of the related member, nor shall the exclusion apply to any income otherwise excluded under this chapter.

(x) Amounts that are subject to the tax levied pursuant 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, 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.

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

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

(ii) The term "installment method" means a method under which the income recognized for any taxable year from the



disposition is that proportion of the payments received in that year which the gross profit (realized or to be realized when payment is completed) bears to the total contract price.

(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:



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

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

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

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

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

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

420 (g) Income received by a domestic corporation which is
421 "taxable in another state" as this term is defined in this
422 article, derived from business activity conducted outside this
423 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 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.

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

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

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

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

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

(w) Amounts that are subject to the tax levied pursuant 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).

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



589 lodging while away from home in the pursuit of a trade or
590 business; and rentals or other payments required to be made as a
591 condition of the continued use or possession, for purposes of the
592 trade or business of property to which the taxpayer has not taken
593 or is not taking title or in which he had no equity. Expense
594 incurred in connection with earning and distributing nontaxable
595 income is not an allowable deduction. Limitations on
596 entertainment expenses shall conform to the provisions of the
597 Internal Revenue Code of 1986.

598 (b) **Interest.** All interest paid or accrued during the
599 taxable year on business indebtedness, except interest upon the
600 indebtedness for the purchase of tax-free bonds, or any stocks,
601 the dividends from which are nontaxable under the provisions of
602 this article; provided, however, in the case of securities
603 dealers, interest payments or accruals on loans, the proceeds of
604 which are used to purchase tax-exempt securities, shall be
605 deductible if income from otherwise tax-free securities is
606 reported as income. Investment interest expense shall be limited
607 to investment income. Interest expense incurred for the purchase
608 of treasury stock, to pay dividends, or incurred as a result of an
609 undercapitalized affiliated corporation may not be deducted unless
610 an ordinary and necessary business purpose can be established to
611 the satisfaction of the commissioner. For the purposes of this
612 paragraph, the phrase "interest upon the indebtedness for the
613 purchase of tax-free bonds" applies only to the indebtedness
614 incurred for the purpose of directly purchasing tax-free bonds and
615 does not apply to any other indebtedness incurred in the regular
616 course of the taxpayer's business. Any corporation, association,
617 organization or other entity taxable under Section 27-7-23(c)
618 shall allocate interest expense as provided in Section
619 27-7-23(c)(3)(I).

620 (c) **Taxes.** Taxes paid or accrued within the taxable
621 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.



655 (h) **Contributions or gifts.** Except as otherwise
656 provided in subsection (3)(a) of this section for individuals,
657 contributions or gifts made by corporations within the taxable
658 year to corporations, organizations, associations or institutions,
659 including Community Chest funds, foundations and trusts created
660 solely and exclusively for religious, charitable, scientific or
661 educational purposes, or for the prevention of cruelty to children
662 or animals, no part of the net earnings of which inure to the
663 benefit of any private stockholder or individual. This deduction
664 shall be allowed in an amount not to exceed twenty percent (20%)
665 of the net income. Such contributions or gifts shall be allowable
666 as deductions only if verified under rules and regulations
667 prescribed by the commissioner, with the approval of the Governor.
668 Contributions made in any form other than cash shall be allowed as
669 a deduction, subject to the limitations herein provided, in an
670 amount equal to the actual market value of the contributions at
671 the time the contribution is actually made and consummated.

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

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

680 (k) **Contributions to employee pension plans.**
681 Contributions made by an employer to a plan or a trust forming
682 part of a pension plan, stock bonus plan, disability or
683 death-benefit plan, or profit-sharing plan of such employer for
684 the exclusive benefit of some or all of his, their, or its
685 employees, or their beneficiaries, shall be deductible from his,
686 their, or its income only to the extent that, and for the taxable
687 year in which, the contribution is deductible for federal income



688 tax purposes under the Internal Revenue Code of 1986 and any other
689 provisions of similar purport in the Internal Revenue Laws of the
690 United States, and the rules, regulations, rulings and
691 determinations promulgated thereunder, provided that:

692 (i) The plan or trust be irrevocable.

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

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

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

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



720 For any taxable year ending after December 31, 1997, the
721 period for net operating loss carrybacks and net operating loss
722 carryovers shall be the same as those established by the Internal
723 Revenue Code and the rules, regulations, rulings and
724 determinations promulgated thereunder.

725 The term "net operating loss," for the purposes of this
726 paragraph, shall be the excess of the deductions allowed over the
727 gross income; provided, however, the following deductions shall
728 not be allowed in computing same:

729 (i) No net operating loss deduction shall be
730 allowed.

731 (ii) No personal exemption deduction shall be
732 allowed.

733 (iii) Allowable deductions which are not
734 attributable to taxpayer's trade or business shall be allowed only
735 to the extent of the amount of gross income not derived from such
736 trade or business.

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

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



(n) **Dividend distributions - real estate investment**

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

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

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

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

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

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

(o) **Contributions to college savings trust fund**

accounts. Contributions or payments to a Mississippi Affordable College Savings Program account are deductible as provided under Section 37-155-113. Payments made under a prepaid tuition contract entered into under the Mississippi Prepaid Affordable



785 College Tuition Program are deductible as provided under Section
786 37-155-17.

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

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

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

791 1. Expenses, losses and costs for, related
792 to, or in connection directly or indirectly with the direct or
793 indirect acquisition, use, maintenance or management, ownership,
794 sale, exchange or any other disposition of intangible property to
795 the extent such amounts are allowed as deductions or costs in
796 determining taxable income under this chapter;

797 2. Expenses or losses related to or incurred
798 in connection directly or indirectly with factoring transactions
799 or discounting transactions;

800 3. Royalty, patent, technical and copyright
801 fees;

802 4. Licensing fees; and

803 5. Other similar expenses and costs.

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

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

814 (iv) "Related member" means an entity or person
815 that, with respect to the taxpayer during all or any portion of
816 the taxable year, is a related entity, a component member as
817 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.

(v) "Related entity" means:

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

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

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

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

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

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



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

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

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

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

867 (e) The commissioner may prescribe such regulations as
868 necessary or appropriate to carry out the purposes of this
869 subsection, including, but not limited to, clarifying definitions
870 of terms, rules of stock attribution, factoring and discount
871 transactions.

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

873 (a) The amount allowable for individual nonbusiness
874 itemized deductions for federal income tax purposes where the
875 individual is eligible to elect, for the taxable year, to itemize
876 deductions on his federal return except the following:

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

878 (ii) The deduction for gaming losses from gaming
879 establishments * * *;

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



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

888 (i) Three Thousand Four Hundred Dollars
889 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
890 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
891 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
892 in the case of married individuals filing a joint or combined
893 return;

894 (ii) One Thousand Seven Hundred Dollars
895 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
896 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
897 Three Hundred Dollars (\$2,300.00) for each calendar year
898 thereafter in the case of married individuals filing separate
899 returns;

900 (iii) Three Thousand Four Hundred Dollars
901 (\$3,400.00) in the case of a head of family; or

902 (iv) Two Thousand Three Hundred Dollars
903 (\$2,300.00) in the case of an individual who is not married.

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

911 (c) A nonresident individual shall be allowed the same
912 individual nonbusiness deductions as are authorized for resident
913 individuals in paragraph (a) or (b) of this subsection; however,
914 the nonresident individual is entitled only to that proportion of
915 the individual nonbusiness deductions as his net income from



916 sources within the State of Mississippi bears to his total or
917 entire net income from all sources.

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

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

922 27-7-17. In computing taxable income, there shall be allowed
923 as deductions:

924 (1) **Business deductions.**

925 (a) **Business expenses.** All the ordinary and necessary
926 expenses paid or incurred during the taxable year in carrying on
927 any trade or business, including a reasonable allowance for
928 salaries or other compensation for personal services actually
929 rendered; nonreimbursable traveling expenses incident to current
930 employment, including a reasonable amount expended for meals and
931 lodging while away from home in the pursuit of a trade or
932 business; and rentals or other payments required to be made as a
933 condition of the continued use or possession, for purposes of the
934 trade or business of property to which the taxpayer has not taken
935 or is not taking title or in which he had no equity. Expense
936 incurred in connection with earning and distributing nontaxable
937 income is not an allowable deduction. Limitations on
938 entertainment expenses shall conform to the provisions of the
939 Internal Revenue Code of 1986.

940 (b) **Interest.** All interest paid or accrued during the
941 taxable year on business indebtedness, except interest upon the
942 indebtedness for the purchase of tax-free bonds, or any stocks,
943 the dividends from which are nontaxable under the provisions of
944 this article; provided, however, in the case of securities
945 dealers, interest payments or accruals on loans, the proceeds of
946 which are used to purchase tax-exempt securities, shall be
947 deductible if income from otherwise tax-free securities is
948 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



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

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

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

997 (h) **Contributions or gifts.** Except as otherwise
998 provided in subsection (2)(a) of this section for individuals,
999 contributions or gifts made by corporations within the taxable
1000 year to corporations, organizations, associations or institutions,
1001 including Community Chest funds, foundations and trusts created
1002 solely and exclusively for religious, charitable, scientific or
1003 educational purposes, or for the prevention of cruelty to children
1004 or animals, no part of the net earnings of which inure to the
1005 benefit of any private stockholder or individual. This deduction
1006 shall be allowed in an amount not to exceed twenty percent (20%)
1007 of the net income. Such contributions or gifts shall be allowable
1008 as deductions only if verified under rules and regulations
1009 prescribed by the commissioner, with the approval of the Governor.
1010 Contributions made in any form other than cash shall be allowed as
1011 a deduction, subject to the limitations herein provided, in an
1012 amount equal to the actual market value of the contributions at
1013 the time the contribution is actually made and consummated.



1014 (i) **Reserve funds - insurance companies.** In the case
1015 of insurance companies the net additions required by law to be
1016 made within the taxable year to reserve funds when such reserve
1017 funds are maintained for the purpose of liquidating policies at
1018 maturity.

1019 (j) **Annuity income.** The sums, other than dividends,
1020 paid within the taxpayer year on policy or annuity contracts when
1021 such income has been included in gross income.

1022 (k) **Contributions to employee pension plans.**
1023 Contributions made by an employer to a plan or a trust forming
1024 part of a pension plan, stock bonus plan, disability or
1025 death-benefit plan, or profit-sharing plan of such employer for
1026 the exclusive benefit of some or all of his, their, or its
1027 employees, or their beneficiaries, shall be deductible from his,
1028 their, or its income only to the extent that, and for the taxable
1029 year in which, the contribution is deductible for federal income
1030 tax purposes under the Internal Revenue Code of 1986 and any other
1031 provisions of similar purport in the Internal Revenue Laws of the
1032 United States, and the rules, regulations, rulings and
1033 determinations promulgated thereunder, provided that:

1034 (i) The plan or trust be irrevocable.

1035 (ii) The plan or trust constitute a part of a
1036 pension plan, stock bonus plan, disability or death-benefit plan,
1037 or profit-sharing plan for the exclusive benefit of some or all of
1038 the employer's employees and/or officers, or their beneficiaries,
1039 for the purpose of distributing the corpus and income of the plan
1040 or trust to such employees and/or officers, or their
1041 beneficiaries.

1042 (iii) No part of the corpus or income of the plan
1043 or trust can be used for purposes other than for the exclusive
1044 benefit of employees and/or officers, or their beneficiaries.

1045 Contributions to all plans or to all trusts of real or
1046 personal property (or real and personal property combined) or to



1047 insured plans created under a retirement plan for which provision
1048 has been made under the laws of the United States of America,
1049 making such contributions deductible from income for federal
1050 income tax purposes, shall be deductible only to the same extent
1051 under the Income Tax Laws of the State of Mississippi.

1052 (1) Net operating loss carrybacks and carryovers. A
1053 net operating loss for any taxable year ending after December 31,
1054 1993, and taxable years thereafter, shall be a net operating loss
1055 carryback to each of the three (3) taxable years preceding the
1056 taxable year of the loss. If the net operating loss for any
1057 taxable year is not exhausted by carrybacks to the three (3)
1058 taxable years preceding the taxable year of the loss, then there
1059 shall be a net operating loss carryover to each of the fifteen
1060 (15) taxable years following the taxable year of the loss
1061 beginning with any taxable year after December 31, 1991.

1062 For any taxable year ending after December 31, 1997, the
1063 period for net operating loss carrybacks and net operating loss
1064 carryovers shall be the same as those established by the Internal
1065 Revenue Code and the rules, regulations, rulings and
1066 determinations promulgated thereunder.

1067 The term "net operating loss," for the purposes of this
1068 paragraph, shall be the excess of the deductions allowed over the
1069 gross income; provided, however, the following deductions shall
1070 not be allowed in computing same:

1071 (i) No net operating loss deduction shall be
1072 allowed.

1073 (ii) No personal exemption deduction shall be
1074 allowed.

1075 (iii) Allowable deductions which are not
1076 attributable to taxpayer's trade or business shall be allowed only
1077 to the extent of the amount of gross income not derived from such
1078 trade or business.



1079 Any taxpayer entitled to a carryback period as provided by
1080 this paragraph may elect to relinquish the entire carryback period
1081 with respect to a net operating loss for any taxable year ending
1082 after December 31, 1991. The election shall be made in the manner
1083 prescribed by the State Tax Commission and shall be made by the
1084 due date, including extensions of time, for filing the taxpayer's
1085 return for the taxable year of the net operating loss for which
1086 the election is to be in effect. The election, once made for any
1087 taxable year, shall be irrevocable for that taxable year.

1088 (m) **Amortization of pollution or environmental control**
1089 **facilities.** Allowance of deduction. Every taxpayer, at his
1090 election, shall be entitled to a deduction for pollution or
1091 environmental control facilities to the same extent as that
1092 allowed under the Internal Revenue Code and the rules,
1093 regulations, rulings and determinations promulgated thereunder.

1094 (n) **Dividend distributions - real estate investment**
1095 **trusts.** "Real estate investment trust" (hereinafter referred to
1096 as REIT) shall have the meaning ascribed to such term in Section
1097 856 of the federal Internal Revenue Code of 1986, as amended. A
1098 REIT is allowed a dividend distributed deduction if the dividend
1099 distributions meet the requirements of Section 857 or are
1100 otherwise deductible under Section 858 or 860, federal Internal
1101 Revenue Code of 1986, as amended. In addition:

1102 (i) A dividend distributed deduction shall only be
1103 allowed for dividends paid by a publicly traded REIT. A qualified
1104 REIT subsidiary shall be allowed a dividend distributed deduction
1105 if its owner is a publicly traded REIT.

1106 (ii) Income generated from real estate contributed
1107 or sold to a REIT by a shareholder or related party shall not give
1108 rise to a dividend distributed deduction, unless the shareholder
1109 or related party would have received the dividend distributed
1110 deduction under this chapter.



1111 (iii) A holding corporation receiving a dividend
1112 from a REIT shall not be allowed the deduction in Section
1113 27-7-15(4)(t).

1114 (iv) Any REIT not allowed the dividend distributed
1115 deduction in the federal Internal Revenue Code of 1986, as
1116 amended, shall not be allowed a dividend distributed deduction
1117 under this chapter.

1118 The commissioner is authorized to promulgate rules and
1119 regulations consistent with the provisions in Section 269 of the
1120 federal Internal Revenue Code of 1986, as amended, so as to
1121 prevent the evasion or avoidance of state income tax.

1122 (o) **Contributions to college savings trust fund**
1123 **accounts.** Contributions or payments to a Mississippi Affordable
1124 College Savings Program account are deductible as provided under
1125 Section 37-155-113. Payments made under a prepaid tuition
1126 contract entered into under the Mississippi Prepaid Affordable
1127 College Tuition Program are deductible as provided under Section
1128 37-155-17.

1129 (2) **Individual nonbusiness deductions.**

1130 (a) The amount allowable for individual nonbusiness
1131 itemized deductions for federal income tax purposes where the
1132 individual is eligible to elect, for the taxable year, to itemize
1133 deductions on his federal return except the following:

1134 (i) The deduction for state income taxes paid;

1135 (ii) The deduction for gaming losses from gaming
1136 establishments * * *;

1137 (iii) The deduction for taxes collected by * * *
1138 gaming establishments pursuant to Section 27-7-901 and Section 1
1139 of Senate Bill No. 3113, 2002 Regular Session.

1140 (b) In lieu of the individual nonbusiness itemized
1141 deductions authorized in paragraph (a), for all purposes other
1142 than ordinary and necessary expenses paid or incurred during the



1143 taxable year in carrying on any trade or business, an optional
1144 standard deduction of:

1145 (i) Three Thousand Four Hundred Dollars
1146 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
1147 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
1148 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
1149 in the case of married individuals filing a joint or combined
1150 return;

1151 (ii) One Thousand Seven Hundred Dollars
1152 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
1153 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
1154 Three Hundred Dollars (\$2,300.00) for each calendar year
1155 thereafter in the case of married individuals filing separate
1156 returns;

1157 (iii) Three Thousand Four Hundred Dollars
1158 (\$3,400.00) in the case of a head of family; or

1159 (iv) Two Thousand Three Hundred Dollars
1160 (\$2,300.00) in the case of an individual who is not married.

1161 In the case of a husband and wife living together, having
1162 separate incomes, and filing combined returns, the standard
1163 deduction authorized may be divided in any manner they choose. In
1164 the case of separate returns by a husband and wife, the standard
1165 deduction shall not be allowed to either if the taxable income of
1166 one of the spouses is determined without regard to the standard
1167 deduction.

1168 (c) A nonresident individual shall be allowed the same
1169 individual nonbusiness deductions as are authorized for resident
1170 individuals in paragraph (a) or (b) of this subsection; however,
1171 the nonresident individual is entitled only to that proportion of
1172 the individual nonbusiness deductions as his net income from
1173 sources within the State of Mississippi bears to his total or
1174 entire net income from all sources.



1175 (3) Nothing in this section shall permit the same item to be
1176 deducted more than once, either in fact or in effect.

1177 **SECTION 4.** This act shall take effect and be in force from
1178 and after January 1, 2002.

