

By: Senator(s) Minor

To: Finance

SENATE BILL NO. 3113
(As Sent to Governor)

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 MISSISSIPPI GAMING CONTROL
4 ACT; TO 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; TO PROVIDE THAT NET OPERATING LOSSES FOR ANY TAXABLE
12 YEAR ENDING AFTER DECEMBER 31, 2001, SHALL BE A NET OPERATING LOSS
13 CARRYBACK FOR EACH OF THE TWO TAXABLE YEARS PRECEDING THE LOSS; TO
14 PROVIDE THAT IF THE NET OPERATING LOSS FOR ANY TAXABLE YEAR IS NOT
15 EXHAUSTED BY CARRYBACKS TO SUCH PRECEDING YEARS, THEN THERE SHALL
16 BE A NET OPERATING LOSS CARRYOVER TO EACH OF THE TWENTY TAXABLE
17 YEARS FOLLOWING THE TAXABLE YEAR OF THE LOSS; AND FOR RELATED
18 PURPOSES.

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

20 **SECTION 1.** (1) There is hereby levied and assessed upon
21 patrons of gaming establishments located in this state that are
22 not licensed under the provisions of the Mississippi Gaming
23 Control Act, a tax of three percent (3%) of the amounts that are
24 paid or credited to such patrons by the gaming establishment,
25 which tax is the same in kind and rate as has heretofore been
26 imposed pursuant to Section 27-7-901 upon the patrons of gaming
27 establishments which are licensed under the Mississippi Gaming
28 Control Act. The legal incidence and duty to pay such taxes shall
29 fall upon the patron. The assessment of such tax is subject to
30 any exemptions as may exist under federal or state law. The State
31 Tax Commission may enter into tax collection agreements regarding
32 this tax.

33 (2) As used in this section, "amounts that are paid or
34 credited" means amounts or credits that are subject to the



35 withholding or reporting requirements of the Internal Revenue
36 Code.

37 (3) No credit shall be allowed under the Income Tax Law of
38 1952 for the tax collected by gaming establishments pursuant to
39 this section.

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

42 [* * * **Through June 30, 2003, this section shall read as**
43 **follows:]**

44 27-7-15. (1) For the purposes of this article, except as
45 otherwise provided, the term "gross income" means and includes the
46 income of a taxpayer derived from salaries, wages, fees or
47 compensation for service, of whatever kind and in whatever form
48 paid, including income from governmental agencies and subdivisions
49 thereof; or from professions, vocations, trades, businesses,
50 commerce or sales, or renting or dealing in property, or
51 reacquired property; also from annuities, interest, rents,
52 dividends, securities, insurance premiums, reinsurance premiums,
53 considerations for supplemental insurance contracts, or the
54 transaction of any business carried on for gain or profit, or
55 gains, or profits, and income derived from any source whatever and
56 in whatever form paid. The amount of all such items of income
57 shall be included in the gross income for the taxable year in
58 which received by the taxpayer. The amount by which an eligible
59 employee's salary is reduced pursuant to a salary reduction
60 agreement authorized under Section 25-17-5 shall be excluded from
61 the term "gross income" within the meaning of this article.

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

65 (a) **Dealers in property.** Federal rules, regulations
66 and revenue procedures shall be followed with respect to



67 installment sales unless a transaction results in the shifting of
68 income from inside the state to outside the state.

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

70 (i) Prior to January 1, 2001, federal rules,
71 regulations and revenue procedures shall be followed with respect
72 to installment sales except they shall be applied and administered
73 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the
74 106th Congress, had not been enacted. This provision will
75 generally affect taxpayers, reporting on the accrual method of
76 accounting, entering into installment note agreements on or after
77 December 17, 1999. Any gain or profit resulting from the casual
78 sale of property will be recognized in the year of sale.

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



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

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

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

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

128 (f) **Reimbursement for expenses of moving.** There shall
129 be included in gross income (as compensation for services) any
130 amount received or accrued, directly or indirectly, by an
131 individual as a payment for or reimbursement of expenses of moving



132 from one residence to another residence which is attributable to
133 employment or self-employment.

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

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

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

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

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

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

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

161 (f) Income received by any religious denomination or by
162 any institution or trust for moral or mental improvements,
163 religious, Bible, tract, charitable, benevolent, fraternal,
164 missionary, hospital, infirmary, educational, scientific,



165 literary, library, patriotic, historical or cemetery purposes or
166 for two (2) or more of such purposes, if such income be used
167 exclusively for carrying out one or more of such purposes.

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

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

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

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

188 (k) Amounts received as retirement allowances,
189 pensions, annuities or optional retirement allowances paid under
190 the federal Social Security Act, the Railroad Retirement Act, the
191 Federal Civil Service Retirement Act, or any other retirement
192 system of the United States government, retirement allowances paid
193 under the Mississippi Public Employees' Retirement System,
194 Mississippi Highway Safety Patrol Retirement System or any other
195 retirement system of the State of Mississippi or any political
196 subdivision thereof. The exemption allowed under this paragraph



197 (k) shall be available to the spouse or other beneficiary at the
198 death of the primary retiree.

199 (l) Amounts received as retirement allowances,
200 pensions, annuities or optional retirement allowances paid by any
201 public or governmental retirement system not designated in
202 paragraph (k) or any private retirement system or plan of which
203 the recipient was a member at any time during the period of his
204 employment. Amounts received as a distribution under a Roth
205 Individual Retirement Account shall be treated in the same manner
206 as provided under the Internal Revenue Code of 1986, as amended.
207 The exemption allowed under this paragraph (l) shall be available
208 to the spouse or other beneficiary at the death of the primary
209 retiree.

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

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

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

227 (p) The amount representing the difference between the
228 increase of gross income derived from sales for export outside the
229 United States as compared to the preceding tax year wherein gross



230 income from export sales was highest, and the net increase in
231 expenses attributable to such increased exports. In the absence
232 of direct accounting the ratio of net profits to total sales may
233 be applied to the increase in export sales. This paragraph (p)
234 shall only apply to businesses located in this state engaging in
235 the international export of Mississippi goods and services. Such
236 goods or services shall have at least fifty percent (50%) of value
237 added at a location in Mississippi.

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

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

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

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

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



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

264 (w) Income resulting from transactions with a related
265 member where the related member subject to tax under this chapter
266 was required to, and did in fact, add back the expense of such
267 transactions as required by Section 27-7-17(2). Under no
268 circumstances may the exclusion from income exceed the deduction
269 add-back of the related member, nor shall the exclusion apply to
270 any income otherwise excluded under this chapter.

271 (x) Amounts that are subject to the tax levied pursuant
272 to Section 27-7-901, and are paid to patrons by gaming
273 establishments licensed under the Mississippi Gaming Control Act.

274 (y) Amounts that are subject to the tax levied pursuant
275 to Section 1 of Senate Bill No. 3113, 2002 Regular Session, and
276 are paid to patrons by gaming establishments not licensed under
277 the Mississippi Gaming Control Act.

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

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

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

289 (c) **Period of conflict.** For the purpose of this
290 subsection, the Vietnam Conflict began February 28, 1961, and ends
291 on the date designated by the President by Executive Order as the
292 date of the termination of combatant activities in Vietnam. For
293 the purpose of this subsection, an individual is in a missing



294 status as a result of the Vietnam Conflict if immediately before
295 such status began he was performing service in Vietnam or was
296 performing service in Southeast Asia in direct support of military
297 operations in Vietnam. "Southeast Asia," as used in this
298 paragraph, is defined to include Cambodia, Laos, Thailand and
299 waters adjacent thereto.

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

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

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

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

321 (h) If refund or credit of any overpayment of tax for
322 any taxable year resulting from the application of subsection (5)
323 of this section is prevented by the operation of any law or rule
324 of law, such refund or credit of such overpayment of tax may,
325 nevertheless, be made or allowed if claim therefor is filed with



326 the State Tax Commission within three (3) years after the date of
327 the enactment of this subsection.

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

330 (6) A shareholder of an S corporation, as defined in Section
331 27-8-3(1)(g), shall take into account the income, loss, deduction
332 or credit of the S corporation only to the extent provided in
333 Section 27-8-7(2).

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

336 27-7-15. (1) For the purposes of this article, except as
337 otherwise provided, the term "gross income" means and includes the
338 income of a taxpayer derived from salaries, wages, fees or
339 compensation for service, of whatever kind and in whatever form
340 paid, including income from governmental agencies and subdivisions
341 thereof; or from professions, vocations, trades, businesses,
342 commerce or sales, or renting or dealing in property, or
343 reacquired property; also from annuities, interest, rents,
344 dividends, securities, insurance premiums, reinsurance premiums,
345 considerations for supplemental insurance contracts, or the
346 transaction of any business carried on for gain or profit, or
347 gains, or profits, and income derived from any source whatever and
348 in whatever form paid. The amount of all such items of income
349 shall be included in the gross income for the taxable year in
350 which received by the taxpayer. The amount by which an eligible
351 employee's salary is reduced pursuant to a salary reduction
352 agreement authorized under Section 25-17-5 shall be excluded from
353 the term "gross income" within the meaning of this article.

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



357 (a) **Dealers in property.** Federal rules, regulations
358 and revenue procedures shall be followed with respect to
359 installment sales.

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

450 (k) Amounts received as retirement allowances,
451 pensions, annuities or optional retirement allowances paid under
452 the federal Social Security Act, the Railroad Retirement Act, the
453 Federal Civil Service Retirement Act, or any other retirement
454 system of the United States government, retirement allowances paid
455 under the Mississippi Public Employees' Retirement System,



456 Mississippi Highway Safety Patrol Retirement System or any other
457 retirement system of the State of Mississippi or any political
458 subdivision thereof. The exemption allowed under this paragraph
459 (k) shall be available to the spouse or other beneficiary at the
460 death of the primary retiree.

461 (l) Amounts received as retirement allowances,
462 pensions, annuities or optional retirement allowances paid by any
463 public or governmental retirement system not designated in
464 paragraph (k) or any private retirement system or plan of which
465 the recipient was a member at any time during the period of his
466 employment. Amounts received as a distribution under a Roth
467 individual retirement account shall be treated in the same manner
468 as provided under the Internal Revenue Code of 1986, as amended.
469 The exemption allowed under this paragraph (l) shall be available
470 to the spouse or other beneficiary at the death of the primary
471 retiree.

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

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

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



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

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

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

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

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

517 (u) Interest, dividends, gains or income of any kind on
518 any account in the Mississippi Affordable College Savings Trust
519 Fund, as established in Sections 37-155-101 through 37-155-125, to
520 the extent that such amounts remain on deposit in the MACS Trust



521 Fund or are withdrawn pursuant to a qualified withdrawal, as
522 defined in Section 37-155-105.

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

526 (w) Amounts that are subject to the tax levied pursuant
527 to Section 27-7-901, and are paid to patrons by gaming
528 establishments licensed under the Mississippi Gaming Control Act.

529 (x) Amounts that are subject to the tax levied pursuant
530 to Section 1 of Senate Bill No. 3113, 2002 Regular Session, and
531 are paid to patrons by gaming establishments not licensed under
532 the Mississippi Gaming Control Act.

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

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

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

544 (c) **Period of conflict.** For the purpose of this
545 subsection, the Vietnam Conflict began February 28, 1961, and ends
546 on the date designated by the President by Executive Order as the
547 date of the termination of combatant activities in Vietnam. For
548 the purpose of this subsection, an individual is in a missing
549 status as a result of the Vietnam Conflict if immediately before
550 such status began he was performing service in Vietnam or was
551 performing service in Southeast Asia in direct support of military
552 operations in Vietnam. "Southeast Asia," as used in this



553 paragraph, is defined to include Cambodia, Laos, Thailand and
554 waters adjacent thereto.

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

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

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

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

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

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



585 (6) A shareholder of an S corporation, as defined in Section
586 27-8-3(1)(g), shall take into account the income, loss, deduction
587 or credit of the S corporation only to the extent provided in
588 Section 27-8-7(2).

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

591 [* * * Through June 30, 2003, this section shall read as
592 follows:]

593 27-7-17. In computing taxable income, there shall be allowed
594 as deductions:

595 (1) **Business deductions.**

596 (a) **Business expenses.** All the ordinary and necessary
597 expenses paid or incurred during the taxable year in carrying on
598 any trade or business, including a reasonable allowance for
599 salaries or other compensation for personal services actually
600 rendered; nonreimbursable traveling expenses incident to current
601 employment, including a reasonable amount expended for meals and
602 lodging while away from home in the pursuit of a trade or
603 business; and rentals or other payments required to be made as a
604 condition of the continued use or possession, for purposes of the
605 trade or business of property to which the taxpayer has not taken
606 or is not taking title or in which he had no equity. Expense
607 incurred in connection with earning and distributing nontaxable
608 income is not an allowable deduction. Limitations on
609 entertainment expenses shall conform to the provisions of the
610 Internal Revenue Code of 1986.

611 (b) **Interest.** All interest paid or accrued during the
612 taxable year on business indebtedness, except interest upon the
613 indebtedness for the purchase of tax-free bonds, or any stocks,
614 the dividends from which are nontaxable under the provisions of
615 this article; provided, however, in the case of securities
616 dealers, interest payments or accruals on loans, the proceeds of
617 which are used to purchase tax-exempt securities, shall be



618 deductible if income from otherwise tax-free securities is
619 reported as income. Investment interest expense shall be limited
620 to investment income. Interest expense incurred for the purchase
621 of treasury stock, to pay dividends, or incurred as a result of an
622 undercapitalized affiliated corporation may not be deducted unless
623 an ordinary and necessary business purpose can be established to
624 the satisfaction of the commissioner. For the purposes of this
625 paragraph, the phrase "interest upon the indebtedness for the
626 purchase of tax-free bonds" applies only to the indebtedness
627 incurred for the purpose of directly purchasing tax-free bonds and
628 does not apply to any other indebtedness incurred in the regular
629 course of the taxpayer's business. Any corporation, association,
630 organization or other entity taxable under Section 27-7-23(c)
631 shall allocate interest expense as provided in Section
632 27-7-23(c)(3)(I).

633 (c) **Taxes.** Taxes paid or accrued within the taxable
634 year, except state and federal income taxes, excise taxes based on
635 or measured by net income, estate and inheritance taxes, gift
636 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
637 use taxes unless incurred as an item of expense in a trade or
638 business or in the production of taxable income. In the case of
639 an individual, taxes permitted as an itemized deduction under the
640 provisions of subsection (3)(a) of this section are to be claimed
641 thereunder.

642 (d) **Business losses.**

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

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

649 (e) **Bad debts.** Losses from debts ascertained to be
650 worthless and charged off during the taxable year, if sustained in



651 the conduct of the regular trade or business of the taxpayer;
652 provided, that such losses shall be allowed only when the taxpayer
653 has reported as income, on the accrual basis, the amount of such
654 debt or account.

655 (f) **Depreciation.** A reasonable allowance for
656 exhaustion, wear and tear of property used in the trade or
657 business, or rental property, and depreciation upon buildings
658 based upon their reasonable value as of March 16, 1912, if
659 acquired prior thereto, and upon cost if acquired subsequent to
660 that date.

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

668 (h) **Contributions or gifts.** Except as otherwise
669 provided in subsection (3)(a) of this section for individuals,
670 contributions or gifts made by corporations within the taxable
671 year to corporations, organizations, associations or institutions,
672 including Community Chest funds, foundations and trusts created
673 solely and exclusively for religious, charitable, scientific or
674 educational purposes, or for the prevention of cruelty to children
675 or animals, no part of the net earnings of which inure to the
676 benefit of any private stockholder or individual. This deduction
677 shall be allowed in an amount not to exceed twenty percent (20%)
678 of the net income. Such contributions or gifts shall be allowable
679 as deductions only if verified under rules and regulations
680 prescribed by the commissioner, with the approval of the Governor.
681 Contributions made in any form other than cash shall be allowed as
682 a deduction, subject to the limitations herein provided, in an



683 amount equal to the actual market value of the contributions at
684 the time the contribution is actually made and consummated.

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

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

693 (k) **Contributions to employee pension plans.**
694 Contributions made by an employer to a plan or a trust forming
695 part of a pension plan, stock bonus plan, disability or
696 death-benefit plan, or profit-sharing plan of such employer for
697 the exclusive benefit of some or all of his, their, or its
698 employees, or their beneficiaries, shall be deductible from his,
699 their, or its income only to the extent that, and for the taxable
700 year in which, the contribution is deductible for federal income
701 tax purposes under the Internal Revenue Code of 1986 and any other
702 provisions of similar purport in the Internal Revenue Laws of the
703 United States, and the rules, regulations, rulings and
704 determinations promulgated thereunder, provided that:

705 (i) The plan or trust be irrevocable.

706 (ii) The plan or trust constitute a part of a
707 pension plan, stock bonus plan, disability or death-benefit plan,
708 or profit-sharing plan for the exclusive benefit of some or all of
709 the employer's employees and/or officers, or their beneficiaries,
710 for the purpose of distributing the corpus and income of the plan
711 or trust to such employees and/or officers, or their
712 beneficiaries.

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



716 Contributions to all plans or to all trusts of real or
717 personal property (or real and personal property combined) or to
718 insured plans created under a retirement plan for which provision
719 has been made under the laws of the United States of America,
720 making such contributions deductible from income for federal
721 income tax purposes, shall be deductible only to the same extent
722 under the Income Tax Laws of the State of Mississippi.

723 (1) **Net operating loss carrybacks and carryovers.** A
724 net operating loss for any taxable year ending after December 31,
725 1993, and taxable years thereafter, shall be a net operating loss
726 carryback to each of the three (3) taxable years preceding the
727 taxable year of the loss. If the net operating loss for any
728 taxable year is not exhausted by carrybacks to the three (3)
729 taxable years preceding the taxable year of the loss, then there
730 shall be a net operating loss carryover to each of the fifteen
731 (15) taxable years following the taxable year of the loss
732 beginning with any taxable year after December 31, 1991.

733 For any taxable year ending after December 31, 1997, the
734 period for net operating loss carrybacks and net operating loss
735 carryovers shall be the same as those established by the Internal
736 Revenue Code and the rules, regulations, rulings and
737 determinations promulgated thereunder as in effect at the taxable
738 year end or on December 31, 2000, whichever is earlier.

739 A net operating loss for any taxable year ending after
740 December 31, 2001, and taxable years thereafter, shall be a net
741 operating loss carryback to each of the two (2) taxable years
742 preceding the taxable year of the loss. If the net operating loss
743 for any taxable year is not exhausted by carrybacks to the two (2)
744 taxable years preceding the taxable year of the loss, then there
745 shall be a net operating loss carryover to each of the twenty (20)
746 taxable years following the taxable year of the loss beginning
747 with any taxable year after the taxable year of the loss.



748 The term "net operating loss," for the purposes of this
749 paragraph, shall be the excess of the deductions allowed over the
750 gross income; provided, however, the following deductions shall
751 not be allowed in computing same:

752 (i) No net operating loss deduction shall be
753 allowed.

754 (ii) No personal exemption deduction shall be
755 allowed.

756 (iii) Allowable deductions which are not
757 attributable to taxpayer's trade or business shall be allowed only
758 to the extent of the amount of gross income not derived from such
759 trade or business.

760 Any taxpayer entitled to a carryback period as provided by
761 this paragraph may elect to relinquish the entire carryback period
762 with respect to a net operating loss for any taxable year ending
763 after December 31, 1991. The election shall be made in the manner
764 prescribed by the State Tax Commission and shall be made by the
765 due date, including extensions of time, for filing the taxpayer's
766 return for the taxable year of the net operating loss for which
767 the election is to be in effect. The election, once made for any
768 taxable year, shall be irrevocable for that taxable year.

769 (m) **Amortization of pollution or environmental control**
770 **facilities.** Allowance of deduction. Every taxpayer, at his
771 election, shall be entitled to a deduction for pollution or
772 environmental control facilities to the same extent as that
773 allowed under the Internal Revenue Code and the rules,
774 regulations, rulings and determinations promulgated thereunder.

775 (n) **Dividend distributions - real estate investment**
776 **trusts.** "Real estate investment trust" (hereinafter referred to
777 as REIT) shall have the meaning ascribed to such term in Section
778 856 of the federal Internal Revenue Code of 1986, as amended. A
779 REIT is allowed a dividend distributed deduction if the dividend
780 distributions meet the requirements of Section 857 or are



781 otherwise deductible under Section 858 or 860, federal Internal
782 Revenue Code of 1986, as amended. In addition:

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

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

792 (iii) A holding corporation receiving a dividend
793 from a REIT shall not be allowed the deduction in Section
794 27-7-15(4)(t).

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

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

803 (o) **Contributions to college savings trust fund**
804 **accounts.** Contributions or payments to a Mississippi Affordable
805 College Savings Program account are deductible as provided under
806 Section 37-155-113. Payments made under a prepaid tuition
807 contract entered into under the Mississippi Prepaid Affordable
808 College Tuition Program are deductible as provided under Section
809 37-155-17.

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

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

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



814 1. Expenses, losses and costs for, related
815 to, or in connection directly or indirectly with the direct or
816 indirect acquisition, use, maintenance or management, ownership,
817 sale, exchange or any other disposition of intangible property to
818 the extent such amounts are allowed as deductions or costs in
819 determining taxable income under this chapter;

820 2. Expenses or losses related to or incurred
821 in connection directly or indirectly with factoring transactions
822 or discounting transactions;

823 3. Royalty, patent, technical and copyright
824 fees;

825 4. Licensing fees; and

826 5. Other similar expenses and costs.

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

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

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

843 (v) "Related entity" means:

844 1. A stockholder who is an individual or a
845 member of the stockholder's family, as defined in regulations
846 prescribed by the commissioner, if the stockholder and the members



847 of the stockholder's family own, directly, indirectly,
848 beneficially or constructively, in the aggregate, at least fifty
849 percent (50%) of the value of the taxpayer's outstanding stock;

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

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

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

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

872 (c) The adjustments required by this subsection shall
873 not apply to such portion of interest expenses and costs and
874 intangible expenses and costs that the taxpayer can establish
875 meets one (1) of the following:

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



879 (ii) The transaction giving rise to the interest
880 expenses and costs or intangible expenses and costs between the
881 taxpayer and related member was done primarily for a valid
882 business purpose other than the avoidance of taxes, and the
883 related member is not primarily engaged in the acquisition, use,
884 maintenance or management, ownership, sale, exchange or any other
885 disposition of intangible property.

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

890 (e) The commissioner may prescribe such regulations as
891 necessary or appropriate to carry out the purposes of this
892 subsection, including, but not limited to, clarifying definitions
893 of terms, rules of stock attribution, factoring and discount
894 transactions.

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

896 (a) The amount allowable for individual nonbusiness
897 itemized deductions for federal income tax purposes where the
898 individual is eligible to elect, for the taxable year, to itemize
899 deductions on his federal return except the following:

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

901 (ii) The deduction for gaming losses from gaming
902 establishments * * *;

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

905 (iv) The deduction for taxes collected by gaming
906 establishments pursuant to Section 1 of Senate Bill No. 3113, 2002
907 Regular Session.

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



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

913 (i) Three Thousand Four Hundred Dollars
914 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
915 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
916 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
917 in the case of married individuals filing a joint or combined
918 return;

919 (ii) One Thousand Seven Hundred Dollars
920 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
921 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
922 Three Hundred Dollars (\$2,300.00) for each calendar year
923 thereafter in the case of married individuals filing separate
924 returns;

925 (iii) Three Thousand Four Hundred Dollars
926 (\$3,400.00) in the case of a head of family; or

927 (iv) Two Thousand Three Hundred Dollars
928 (\$2,300.00) in the case of an individual who is not married.

929 In the case of a husband and wife living together, having
930 separate incomes, and filing combined returns, the standard
931 deduction authorized may be divided in any manner they choose. In
932 the case of separate returns by a husband and wife, the standard
933 deduction shall not be allowed to either if the taxable income of
934 one of the spouses is determined without regard to the standard
935 deduction.

936 (c) A nonresident individual shall be allowed the same
937 individual nonbusiness deductions as are authorized for resident
938 individuals in paragraph (a) or (b) of this subsection; however,
939 the nonresident individual is entitled only to that proportion of
940 the individual nonbusiness deductions as his net income from
941 sources within the State of Mississippi bears to his total or
942 entire net income from all sources.



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

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

947 27-7-17. In computing taxable income, there shall be allowed
948 as deductions:

949 (1) **Business deductions.**

950 (a) **Business expenses.** All the ordinary and necessary
951 expenses paid or incurred during the taxable year in carrying on
952 any trade or business, including a reasonable allowance for
953 salaries or other compensation for personal services actually
954 rendered; nonreimbursable traveling expenses incident to current
955 employment, including a reasonable amount expended for meals and
956 lodging while away from home in the pursuit of a trade or
957 business; and rentals or other payments required to be made as a
958 condition of the continued use or possession, for purposes of the
959 trade or business of property to which the taxpayer has not taken
960 or is not taking title or in which he had no equity. Expense
961 incurred in connection with earning and distributing nontaxable
962 income is not an allowable deduction. Limitations on
963 entertainment expenses shall conform to the provisions of the
964 Internal Revenue Code of 1986.

965 (b) **Interest.** All interest paid or accrued during the
966 taxable year on business indebtedness, except interest upon the
967 indebtedness for the purchase of tax-free bonds, or any stocks,
968 the dividends from which are nontaxable under the provisions of
969 this article; provided, however, in the case of securities
970 dealers, interest payments or accruals on loans, the proceeds of
971 which are used to purchase tax-exempt securities, shall be
972 deductible if income from otherwise tax-free securities is
973 reported as income. Investment interest expense shall be limited
974 to investment income. Interest expense incurred for the purchase
975 of treasury stock, to pay dividends, or incurred as a result of an



976 undercapitalized affiliated corporation may not be deducted unless
977 an ordinary and necessary business purpose can be established to
978 the satisfaction of the commissioner. For the purposes of this
979 paragraph, the phrase "interest upon the indebtedness for the
980 purchase of tax-free bonds" applies only to the indebtedness
981 incurred for the purpose of directly purchasing tax-free bonds and
982 does not apply to any other indebtedness incurred in the regular
983 course of the taxpayer's business. Any corporation, association,
984 organization or other entity taxable under Section 27-7-23(c)
985 shall allocate interest expense as provided in Section
986 27-7-23(c)(4)(H).

987 (c) **Taxes.** Taxes paid or accrued within the taxable
988 year, except state and federal income taxes, excise taxes based on
989 or measured by net income, estate and inheritance taxes, gift
990 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
991 use taxes unless incurred as an item of expense in a trade or
992 business or in the production of taxable income. In the case of
993 an individual, taxes permitted as an itemized deduction under the
994 provisions of subsection (2)(a) of this section are to be claimed
995 thereunder.

996 (d) **Business losses.**

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

1000 (ii) Limitations on losses from passive activities
1001 and rental real estate shall conform to the provisions of the
1002 Internal Revenue Code of 1986.

1003 (e) **Bad debts.** Losses from debts ascertained to be
1004 worthless and charged off during the taxable year, if sustained in
1005 the conduct of the regular trade or business of the taxpayer;
1006 provided, that such losses shall be allowed only when the taxpayer
1007 has reported as income, on the accrual basis, the amount of such
1008 debt or account.



1009 (f) **Depreciation.** A reasonable allowance for
1010 exhaustion, wear and tear of property used in the trade or
1011 business, or rental property, and depreciation upon buildings
1012 based upon their reasonable value as of March 16, 1912, if
1013 acquired prior thereto, and upon cost if acquired subsequent to
1014 that date.

1015 (g) **Depletion.** In the case of mines, oil and gas
1016 wells, other natural deposits and timber, a reasonable allowance
1017 for depletion and for depreciation of improvements, based upon
1018 cost, including cost of development, not otherwise deducted, or
1019 fair market value as of March 16, 1912, if acquired prior to that
1020 date, such allowance to be made upon regulations prescribed by the
1021 commissioner, with the approval of the Governor.

1022 (h) **Contributions or gifts.** Except as otherwise
1023 provided in subsection (2)(a) of this section for individuals,
1024 contributions or gifts made by corporations within the taxable
1025 year to corporations, organizations, associations or institutions,
1026 including Community Chest funds, foundations and trusts created
1027 solely and exclusively for religious, charitable, scientific or
1028 educational purposes, or for the prevention of cruelty to children
1029 or animals, no part of the net earnings of which inure to the
1030 benefit of any private stockholder or individual. This deduction
1031 shall be allowed in an amount not to exceed twenty percent (20%)
1032 of the net income. Such contributions or gifts shall be allowable
1033 as deductions only if verified under rules and regulations
1034 prescribed by the commissioner, with the approval of the Governor.
1035 Contributions made in any form other than cash shall be allowed as
1036 a deduction, subject to the limitations herein provided, in an
1037 amount equal to the actual market value of the contributions at
1038 the time the contribution is actually made and consummated.

1039 (i) **Reserve funds - insurance companies.** In the case
1040 of insurance companies the net additions required by law to be
1041 made within the taxable year to reserve funds when such reserve



1042 funds are maintained for the purpose of liquidating policies at
1043 maturity.

1044 (j) **Annuity income.** The sums, other than dividends,
1045 paid within the taxpayer year on policy or annuity contracts when
1046 such income has been included in gross income.

1047 (k) **Contributions to employee pension plans.**
1048 Contributions made by an employer to a plan or a trust forming
1049 part of a pension plan, stock bonus plan, disability or
1050 death-benefit plan, or profit-sharing plan of such employer for
1051 the exclusive benefit of some or all of his, their, or its
1052 employees, or their beneficiaries, shall be deductible from his,
1053 their, or its income only to the extent that, and for the taxable
1054 year in which, the contribution is deductible for federal income
1055 tax purposes under the Internal Revenue Code of 1986 and any other
1056 provisions of similar purport in the Internal Revenue Laws of the
1057 United States, and the rules, regulations, rulings and
1058 determinations promulgated thereunder, provided that:

1059 (i) The plan or trust be irrevocable.

1060 (ii) The plan or trust constitute a part of a
1061 pension plan, stock bonus plan, disability or death-benefit plan,
1062 or profit-sharing plan for the exclusive benefit of some or all of
1063 the employer's employees and/or officers, or their beneficiaries,
1064 for the purpose of distributing the corpus and income of the plan
1065 or trust to such employees and/or officers, or their
1066 beneficiaries.

1067 (iii) No part of the corpus or income of the plan
1068 or trust can be used for purposes other than for the exclusive
1069 benefit of employees and/or officers, or their beneficiaries.

1070 Contributions to all plans or to all trusts of real or
1071 personal property (or real and personal property combined) or to
1072 insured plans created under a retirement plan for which provision
1073 has been made under the laws of the United States of America,
1074 making such contributions deductible from income for federal



1075 income tax purposes, shall be deductible only to the same extent
1076 under the Income Tax Laws of the State of Mississippi.

1077 (1) **Net operating loss carrybacks and carryovers.** A
1078 net operating loss for any taxable year ending after December 31,
1079 1993, and taxable years thereafter, shall be a net operating loss
1080 carryback to each of the three (3) taxable years preceding the
1081 taxable year of the loss. If the net operating loss for any
1082 taxable year is not exhausted by carrybacks to the three (3)
1083 taxable years preceding the taxable year of the loss, then there
1084 shall be a net operating loss carryover to each of the fifteen
1085 (15) taxable years following the taxable year of the loss
1086 beginning with any taxable year after December 31, 1991.

1087 For any taxable year ending after December 31, 1997, the
1088 period for net operating loss carrybacks and net operating loss
1089 carryovers shall be the same as those established by the Internal
1090 Revenue Code and the rules, regulations, rulings and
1091 determinations promulgated thereunder as in effect at the taxable
1092 year end or on December 31, 2000, whichever is earlier.

1093 A net operating loss for any taxable year ending after
1094 December 31, 2001, and taxable years thereafter, shall be a net
1095 operating loss carryback to each of the two (2) taxable years
1096 preceding the taxable year of the loss. If the net operating loss
1097 for any taxable year is not exhausted by carrybacks to the two (2)
1098 taxable years preceding the taxable year of the loss, then there
1099 shall be a net operating loss carryover to each of the twenty (20)
1100 taxable years following the taxable year of the loss beginning
1101 with any taxable year after the taxable year of the loss.

1102 The term "net operating loss," for the purposes of this
1103 paragraph, shall be the excess of the deductions allowed over the
1104 gross income; provided, however, the following deductions shall
1105 not be allowed in computing same:

1106 (i) No net operating loss deduction shall be
1107 allowed.



1108 (ii) No personal exemption deduction shall be
1109 allowed.

1110 (iii) Allowable deductions which are not
1111 attributable to taxpayer's trade or business shall be allowed only
1112 to the extent of the amount of gross income not derived from such
1113 trade or business.

1114 Any taxpayer entitled to a carryback period as provided by
1115 this paragraph may elect to relinquish the entire carryback period
1116 with respect to a net operating loss for any taxable year ending
1117 after December 31, 1991. The election shall be made in the manner
1118 prescribed by the State Tax Commission and shall be made by the
1119 due date, including extensions of time, for filing the taxpayer's
1120 return for the taxable year of the net operating loss for which
1121 the election is to be in effect. The election, once made for any
1122 taxable year, shall be irrevocable for that taxable year.

1123 (m) **Amortization of pollution or environmental control**
1124 **facilities.** Allowance of deduction. Every taxpayer, at his
1125 election, shall be entitled to a deduction for pollution or
1126 environmental control facilities to the same extent as that
1127 allowed under the Internal Revenue Code and the rules,
1128 regulations, rulings and determinations promulgated thereunder.

1129 (n) **Dividend distributions - real estate investment**
1130 **trusts.** "Real estate investment trust" (hereinafter referred to
1131 as REIT) shall have the meaning ascribed to such term in Section
1132 856 of the federal Internal Revenue Code of 1986, as amended. A
1133 REIT is allowed a dividend distributed deduction if the dividend
1134 distributions meet the requirements of Section 857 or are
1135 otherwise deductible under Section 858 or 860, federal Internal
1136 Revenue Code of 1986, as amended. In addition:

1137 (i) A dividend distributed deduction shall only be
1138 allowed for dividends paid by a publicly traded REIT. A qualified
1139 REIT subsidiary shall be allowed a dividend distributed deduction
1140 if its owner is a publicly traded REIT.



1141 (ii) Income generated from real estate contributed
1142 or sold to a REIT by a shareholder or related party shall not give
1143 rise to a dividend distributed deduction, unless the shareholder
1144 or related party would have received the dividend distributed
1145 deduction under this chapter.

1146 (iii) A holding corporation receiving a dividend
1147 from a REIT shall not be allowed the deduction in Section
1148 27-7-15(4)(t).

1149 (iv) Any REIT not allowed the dividend distributed
1150 deduction in the federal Internal Revenue Code of 1986, as
1151 amended, shall not be allowed a dividend distributed deduction
1152 under this chapter.

1153 The commissioner is authorized to promulgate rules and
1154 regulations consistent with the provisions in Section 269 of the
1155 federal Internal Revenue Code of 1986, as amended, so as to
1156 prevent the evasion or avoidance of state income tax.

1157 (o) **Contributions to college savings trust fund**
1158 **accounts.** Contributions or payments to a Mississippi Affordable
1159 College Savings Program account are deductible as provided under
1160 Section 37-155-113. Payments made under a prepaid tuition
1161 contract entered into under the Mississippi Prepaid Affordable
1162 College Tuition Program are deductible as provided under Section
1163 37-155-17.

1164 (2) **Individual nonbusiness deductions.**

1165 (a) The amount allowable for individual nonbusiness
1166 itemized deductions for federal income tax purposes where the
1167 individual is eligible to elect, for the taxable year, to itemize
1168 deductions on his federal return except the following:

1169 (i) The deduction for state income taxes paid;

1170 (ii) The deduction for gaming losses from gaming
1171 establishments * * *;

1172 (iii) The deduction for taxes collected
1173 by licensed gaming establishments pursuant to Section 27-7-901;



1174 (iv) The deduction for taxes collected by gaming
1175 establishments pursuant to Section 1 of Senate Bill No. 3113, 2002
1176 Regular Session.

1177 (b) In lieu of the individual nonbusiness itemized
1178 deductions authorized in paragraph (a), for all purposes other
1179 than ordinary and necessary expenses paid or incurred during the
1180 taxable year in carrying on any trade or business, an optional
1181 standard deduction of:

1182 (i) Three Thousand Four Hundred Dollars
1183 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
1184 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
1185 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
1186 in the case of married individuals filing a joint or combined
1187 return;

1188 (ii) One Thousand Seven Hundred Dollars
1189 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
1190 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
1191 Three Hundred Dollars (\$2,300.00) for each calendar year
1192 thereafter in the case of married individuals filing separate
1193 returns;

1194 (iii) Three Thousand Four Hundred Dollars
1195 (\$3,400.00) in the case of a head of family; or

1196 (iv) Two Thousand Three Hundred Dollars
1197 (\$2,300.00) in the case of an individual who is not married.

1198 In the case of a husband and wife living together, having
1199 separate incomes, and filing combined returns, the standard
1200 deduction authorized may be divided in any manner they choose. In
1201 the case of separate returns by a husband and wife, the standard
1202 deduction shall not be allowed to either if the taxable income of
1203 one of the spouses is determined without regard to the standard
1204 deduction.

1205 (c) A nonresident individual shall be allowed the same
1206 individual nonbusiness deductions as are authorized for resident



1207 individuals in paragraph (a) or (b) of this subsection; however,
1208 the nonresident individual is entitled only to that proportion of
1209 the individual nonbusiness deductions as his net income from
1210 sources within the State of Mississippi bears to his total or
1211 entire net income from all sources.

1212 (3) Nothing in this section shall permit the same item to be
1213 deducted more than once, either in fact or in effect.

1214 **SECTION 4.** This act shall take effect and be in force from
1215 and after January 1, 2002.

