

By: Senator(s) Minor

To: Finance

SENATE BILL NO. 3114

1 AN ACT TO AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT NET OPERATING LOSSES FOR ANY TAXABLE YEAR ENDING
3 AFTER DECEMBER 31, 2001, SHALL BE A NET OPERATING LOSS CARRYBACK
4 FOR EACH OF THE TWO TAXABLE YEARS PRECEDING THE LOSS; TO PROVIDE
5 THAT IF THE NET OPERATING LOSS FOR ANY TAXABLE YEAR IS NOT
6 EXHAUSTED BY CARRYBACKS TO SUCH PRECEDING YEARS, THEN THERE SHALL
7 BE A NET OPERATING LOSS CARRYOVER TO EACH OF THE TWENTY TAXABLE
8 YEARS FOLLOWING THE TAXABLE YEAR OF THE LOSS; AND FOR RELATED
9 PURPOSES.

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

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

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

15 27-7-17. In computing taxable income, there shall be allowed
16 as deductions:

17 (1) **Business deductions.**

18 (a) **Business expenses.** All the ordinary and necessary
19 expenses paid or incurred during the taxable year in carrying on
20 any trade or business, including a reasonable allowance for
21 salaries or other compensation for personal services actually
22 rendered; nonreimbursable traveling expenses incident to current
23 employment, including a reasonable amount expended for meals and
24 lodging while away from home in the pursuit of a trade or
25 business; and rentals or other payments required to be made as a
26 condition of the continued use or possession, for purposes of the
27 trade or business of property to which the taxpayer has not taken
28 or is not taking title or in which he had no equity. Expense
29 incurred in connection with earning and distributing nontaxable
30 income is not an allowable deduction. Limitations on



entertainment expenses shall conform to the provisions of the Internal Revenue Code of 1986.

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

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



64 (d) **Business losses.**

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

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

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

77 (f) **Depreciation.** A reasonable allowance for
78 exhaustion, wear and tear of property used in the trade or
79 business, or rental property, and depreciation upon buildings
80 based upon their reasonable value as of March 16, 1912, if
81 acquired prior thereto, and upon cost if acquired subsequent to
82 that date.

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

90 (h) **Contributions or gifts.** Except as otherwise
91 provided in subsection (3)(a) of this section for individuals,
92 contributions or gifts made by corporations within the taxable
93 year to corporations, organizations, associations or institutions,
94 including Community Chest funds, foundations and trusts created
95 solely and exclusively for religious, charitable, scientific or
96 educational purposes, or for the prevention of cruelty to children



or animals, no part of the net earnings of which inure to the benefit of any private stockholder or individual. This deduction shall be allowed in an amount not to exceed twenty percent (20%) of the net income. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the commissioner, with the approval of the Governor. Contributions made in any form other than cash shall be allowed as a deduction, subject to the limitations herein provided, in an amount equal to the actual market value of the contributions at the time the contribution is actually made and consummated.

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

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

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

(i) The plan or trust be irrevocable.

(ii) The plan or trust constitute a part of a pension plan, stock bonus plan, disability or death-benefit plan,



or profit-sharing plan for the exclusive benefit of some or all of the employer's employees and/or officers, or their beneficiaries, for the purpose of distributing the corpus and income of the plan or trust to such employees and/or officers, or their beneficiaries.

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

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

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

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

A net operating loss for any taxable year ending after December 31, 2001, and taxable years thereafter, shall be a net



operating loss carryback to each of the two (2) taxable years
preceding the taxable year of the loss. If the net operating loss
for any taxable year is not exhausted by carrybacks to the two (2)
taxable years preceding the taxable year of the loss, then there
shall be a net operating loss carryover to each of the twenty (20)
taxable years following the taxable year of the loss beginning
with any taxable year after the taxable year of the loss. The
term "net operating loss," for the purposes of this paragraph,
shall be the excess of the deductions allowed over the gross
income; provided, however, the following deductions shall not be
allowed in computing same:

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

(ii) No personal exemption deduction shall be
allowed.

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

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

(m) **Amortization of pollution or environmental control
facilities. Allowance of deduction.** Every taxpayer, at his
election, shall be entitled to a deduction for pollution or
environmental control facilities to the same extent as that



allowed under the Internal Revenue Code and the rules,
regulations, rulings and determinations promulgated thereunder.

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

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

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

(i) "Intangible expenses and costs" include:

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

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

3. Royalty, patent, technical and copyright fees;

4. Licensing fees; and

5. Other similar expenses and costs.

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

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

(iv) "Related member" means an entity or person that, with respect to the taxpayer during all or any portion of



the taxable year, is a related entity, a component member as defined in the Internal Revenue Code, or is an entity or a person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code.

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

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

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

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

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

(3) Individual nonbusiness deductions.

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

- (i) The deduction for state income taxes paid;
- (ii) The deduction for gaming losses from gaming establishments licensed under the Mississippi Gaming Control Act;
- (iii) The deduction for taxes collected by licensed gaming establishments pursuant to Section 27-7-901.



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

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

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

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

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

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

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



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

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

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

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

(1) **Business deductions.**

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

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



to investment income. Interest expense incurred for the purchase of treasury stock, to pay dividends, or incurred as a result of an undercapitalized affiliated corporation may not be deducted unless an ordinary and necessary business purpose can be established to the satisfaction of the commissioner. For the purposes of this paragraph, the phrase "interest upon the indebtedness for the purchase of tax-free bonds" applies only to the indebtedness incurred for the purpose of directly purchasing tax-free bonds and does not apply to any other indebtedness incurred in the regular course of the taxpayer's business. Any corporation, association, organization or other entity taxable under Section 27-7-23(c) shall allocate interest expense as provided in Section 27-7-23(c)(4)(H).

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

(d) **Business losses.**

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

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

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



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

428 (f) **Depreciation.** A reasonable allowance for
429 exhaustion, wear and tear of property used in the trade or
430 business, or rental property, and depreciation upon buildings
431 based upon their reasonable value as of March 16, 1912, if
432 acquired prior thereto, and upon cost if acquired subsequent to
433 that date.

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

441 (h) **Contributions or gifts.** Except as otherwise
442 provided in subsection (2)(a) of this section for individuals,
443 contributions or gifts made by corporations within the taxable
444 year to corporations, organizations, associations or institutions,
445 including Community Chest funds, foundations and trusts created
446 solely and exclusively for religious, charitable, scientific or
447 educational purposes, or for the prevention of cruelty to children
448 or animals, no part of the net earnings of which inure to the
449 benefit of any private stockholder or individual. This deduction
450 shall be allowed in an amount not to exceed twenty percent (20%)
451 of the net income. Such contributions or gifts shall be allowable
452 as deductions only if verified under rules and regulations
453 prescribed by the commissioner, with the approval of the Governor.
454 Contributions made in any form other than cash shall be allowed as
455 a deduction, subject to the limitations herein provided, in an
456 amount equal to the actual market value of the contributions at
457 the time the contribution is actually made and consummated.



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

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

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

(i) The plan or trust be irrevocable.

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

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

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



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

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

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

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

The term "net operating loss," for the purposes of this paragraph, shall be the excess of the deductions allowed over the



523 gross income; provided, however, the following deductions shall
524 not be allowed in computing same:

525 (i) No net operating loss deduction shall be
526 allowed.

527 (ii) No personal exemption deduction shall be
528 allowed.

529 (iii) Allowable deductions which are not
530 attributable to taxpayer's trade or business shall be allowed only
531 to the extent of the amount of gross income not derived from such
532 trade or business.

533 Any taxpayer entitled to a carryback period as provided by
534 this paragraph may elect to relinquish the entire carryback period
535 with respect to a net operating loss for any taxable year ending
536 after December 31, 1991. The election shall be made in the manner
537 prescribed by the State Tax Commission and shall be made by the
538 due date, including extensions of time, for filing the taxpayer's
539 return for the taxable year of the net operating loss for which
540 the election is to be in effect. The election, once made for any
541 taxable year, shall be irrevocable for that taxable year.

542 (m) **Amortization of pollution or environmental control**
543 **facilities. Allowance of deduction.** Every taxpayer, at his
544 election, shall be entitled to a deduction for pollution or
545 environmental control facilities to the same extent as that
546 allowed under the Internal Revenue Code and the rules,
547 regulations, rulings and determinations promulgated thereunder.

548 (n) **Dividend distributions - real estate investment**
549 **trusts.** "Real estate investment trust" (hereinafter referred to
550 as REIT) shall have the meaning ascribed to such term in Section
551 856 of the federal Internal Revenue Code of 1986, as amended. A
552 REIT is allowed a dividend distributed deduction if the dividend
553 distributions meet the requirements of Section 857 or are
554 otherwise deductible under Section 858 or 860, federal Internal
555 Revenue Code of 1986, as amended. In addition:



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

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

565 (iii) A holding corporation receiving a dividend
566 from a REIT shall not be allowed the deduction in Section
567 27-7-15(4)(t).

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

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

576 (o) **Contributions to college savings trust fund**
577 **accounts.** Contributions or payments to a Mississippi Affordable
578 College Savings Program account are deductible as provided under
579 Section 37-155-113. Payments made under a prepaid tuition
580 contract entered into under the Mississippi Prepaid Affordable
581 College Tuition Program are deductible as provided under Section
582 37-155-17.

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

584 (a) The amount allowable for individual nonbusiness
585 itemized deductions for federal income tax purposes where the
586 individual is eligible to elect, for the taxable year, to itemize
587 deductions on his federal return except the following:

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



(ii) The deduction for gaming losses from gaming establishments licensed under the Mississippi Gaming Control Act;

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

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

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

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

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

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

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



621 (c) A nonresident individual shall be allowed the same
622 individual nonbusiness deductions as are authorized for resident
623 individuals in paragraph (a) or (b) of this subsection; however,
624 the nonresident individual is entitled only to that proportion of
625 the individual nonbusiness deductions as his net income from
626 sources within the State of Mississippi bears to his total or
627 entire net income from all sources.

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

630 **SECTION 2.** This act shall take effect and be in force from
631 and after January 1, 2002.

