

*****Adopted*****

AMENDMENT No. 1 PROPOSED TO

Senate Bill NO. 3113

By Representative(s) Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

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

generally affect taxpayers, reporting on the accrual method of accounting, entering into installment note agreements on or after December 17, 1999. Any gain or profit resulting from the casual sale of property will be recognized in the year of sale.

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manner and for any purpose by the original note holder, or the original note holder is merged, liquidated, dissolved or withdrawn from this state, then all deferred tax payments under this section shall immediately become due and payable.

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

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

Cost-Share Program for the installation of water quality best management practices.

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

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

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

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

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

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

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

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

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 paragraph
298 is defined to include Cambodia, Laos, Thailand and waters adjacent
299 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

allowances for not more than ninety (90) days.

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

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

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

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

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

(2) In determining gross income for the purpose of this

section, the following, under regulations prescribed by the commissioner, shall be applicable:

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

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

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

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

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

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

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

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

death of the primary retiree.

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

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

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

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

(p) The amount representing the difference between the increase of gross income derived from sales for export outside the United States as compared to the preceding tax year wherein gross income from export sales was highest, and the net increase in expenses attributable to such increased exports. In the absence of direct accounting the ratio of net profits to total sales may

be applied to the increase in export sales. This paragraph (p) shall only apply to businesses located in this state engaging in the international export of Mississippi goods and services. Such goods or services shall have at least fifty percent (50%) of value added at a location in Mississippi.

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

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

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

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

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

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

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

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

to Section 1 of Senate Bill No. 3113, 2002 Regular Session, and
are paid to patrons by gaming establishments not licensed under
the Mississippi Gaming Control Act.

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

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

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

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

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

(e) "Active service" means active federal service by an

employee or member of the Armed Forces of the United States in an active duty status.

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

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

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

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

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

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

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

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

(1) **Business deductions.**

(a) **Business expenses.** All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually

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

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

(c) **Taxes.** Taxes paid or accrued within the taxable year, except state and federal income taxes, excise taxes based on

or measured by net income, estate and inheritance taxes, gift taxes, cigar and cigarette taxes, gasoline taxes, and sales and use taxes unless incurred as an item of expense in a trade or business or in the production of taxable income. In the case of an individual, taxes permitted as an itemized deduction under the provisions of subsection (3)(a) of this section are to be claimed thereunder.

(d) **Business losses.**

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

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

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

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

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

(h) **Contributions or gifts.** Except as otherwise provided in subsection (3)(a) of this section for individuals,

contributions or gifts made by corporations within the taxable year to corporations, organizations, associations or institutions, including Community Chest funds, foundations and trusts created solely and exclusively for religious, charitable, scientific or 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.

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

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

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

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.**

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)

shall allocate interest expense as provided in Section 27-7-23 (c) (4) (H) .

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

(d) **Business losses.**

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

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

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

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

(g) **Depletion.** In the case of mines, oil and gas wells, other natural deposits and timber, a reasonable allowance for depletion and for depreciation of improvements, based upon cost, including cost of development, not otherwise deducted, or fair market value as of March 16, 1912, if acquired prior to that

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
1036 as 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

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

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.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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.