

By: Representative Watson

To: Ways and Means

HOUSE BILL NO. 1327
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 27-7-17, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE ITEMIZED DEDUCTION ON THE FEDERAL INCOME TAX
3 RETURN FOR OTHER TAXES ALLOWED FOR FEDERAL PURPOSES IN LIEU OF
4 INCOME TAXES PAID MAY NOT BE UTILIZED AS AN INDIVIDUAL NONBUSINESS
5 DEDUCTION FOR STATE INCOME TAX PURPOSES; TO AMEND SECTIONS 27-7-71
6 AND 27-13-43, MISSISSIPPI CODE OF 1972, TO REMOVE THE REQUIREMENT
7 THAT THE CHAIRMAN OF THE STATE TAX COMMISSION MUST APPROVE
8 DETERMINATIONS OF THE BOARD OF REVIEW OF THE STATE TAX COMMISSION
9 IN APPEALS FROM DECISIONS OF THE CHAIRMAN REGARDING INCOME AND
10 FRANCHISE TAXES; AND FOR RELATED PURPOSES.

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

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

14 27-7-17. In computing taxable income, there shall be allowed
15 as deductions:

16 (1) **Business deductions.**

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

32 (b) **Interest.** All interest paid or accrued during the
33 taxable year on business indebtedness, except interest upon the
34 indebtedness for the purchase of tax-free bonds, or any stocks,
35 the dividends from which are nontaxable under the provisions of
36 this article; provided, however, in the case of securities
37 dealers, interest payments or accruals on loans, the proceeds of
38 which are used to purchase tax-exempt securities, shall be
39 deductible if income from otherwise tax-free securities is
40 reported as income. Investment interest expense shall be limited
41 to investment income. Interest expense incurred for the purchase
42 of treasury stock, to pay dividends, or incurred as a result of an
43 undercapitalized affiliated corporation may not be deducted unless
44 an ordinary and necessary business purpose can be established to
45 the satisfaction of the commissioner. For the purposes of this
46 paragraph, the phrase "interest upon the indebtedness for the
47 purchase of tax-free bonds" applies only to the indebtedness
48 incurred for the purpose of directly purchasing tax-free bonds and
49 does not apply to any other indebtedness incurred in the regular
50 course of the taxpayer's business. Any corporation, association,
51 organization or other entity taxable under Section 27-7-23(c)
52 shall allocate interest expense as provided in Section
53 27-7-23(c)(3)(I).

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

63 (d) **Business losses.**

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

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

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

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

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

89 (h) **Contributions or gifts.** Except as otherwise
90 provided in subsection (3)(a) of this section for individuals,
91 contributions or gifts made by corporations within the taxable
92 year to corporations, organizations, associations or institutions,
93 including Community Chest funds, foundations and trusts created
94 solely and exclusively for religious, charitable, scientific or
95 educational purposes, or for the prevention of cruelty to children
96 or animals, no part of the net earnings of which inure to the

97 benefit of any private stockholder or individual. This deduction
98 shall be allowed in an amount not to exceed twenty percent (20%)
99 of the net income. Such contributions or gifts shall be allowable
100 as deductions only if verified under rules and regulations
101 prescribed by the commissioner, with the approval of the Governor.
102 Contributions made in any form other than cash shall be allowed as
103 a deduction, subject to the limitations herein provided, in an
104 amount equal to the actual market value of the contributions at
105 the time the contribution is actually made and consummated.

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

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

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

126 (i) The plan or trust be irrevocable.

127 (ii) The plan or trust constitute a part of a
128 pension plan, stock bonus plan, disability or death-benefit plan,
129 or profit-sharing plan for the exclusive benefit of some or all of

130 the employer's employees and/or officers, or their beneficiaries,
131 for the purpose of distributing the corpus and income of the plan
132 or trust to such employees and/or officers, or their
133 beneficiaries.

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

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

144 (1) **Net operating loss carrybacks and carryovers.** A
145 net operating loss for any taxable year ending after December 31,
146 1993, and taxable years thereafter, shall be a net operating loss
147 carryback to each of the three (3) taxable years preceding the
148 taxable year of the loss. If the net operating loss for any
149 taxable year is not exhausted by carrybacks to the three (3)
150 taxable years preceding the taxable year of the loss, then there
151 shall be a net operating loss carryover to each of the fifteen
152 (15) taxable years following the taxable year of the loss
153 beginning with any taxable year after December 31, 1991.

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

160 A net operating loss for any taxable year ending after
161 December 31, 2001, and taxable years thereafter, shall be a net
162 operating loss carryback to each of the two (2) taxable years

163 preceding the taxable year of the loss. If the net operating loss
164 for any taxable year is not exhausted by carrybacks to the two (2)
165 taxable years preceding the taxable year of the loss, then there
166 shall be a net operating loss carryover to each of the twenty (20)
167 taxable years following the taxable year of the loss beginning
168 with any taxable year after the taxable year of the loss.

169 The term "net operating loss," for the purposes of this
170 paragraph, shall be the excess of the deductions allowed over the
171 gross income; provided, however, the following deductions shall
172 not be allowed in computing same:

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

175 (ii) No personal exemption deduction shall be
176 allowed.

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

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

190 (m) **Amortization of pollution or environmental control**
191 **facilities.** Allowance of deduction. Every taxpayer, at his
192 election, shall be entitled to a deduction for pollution or
193 environmental control facilities to the same extent as that
194 allowed under the Internal Revenue Code and the rules,
195 regulations, rulings and determinations promulgated thereunder.

196 (n) **Dividend distributions - real estate investment**
197 **trusts.** "Real estate investment trust" (hereinafter referred to
198 as REIT) shall have the meaning ascribed to such term in Section
199 856 of the federal Internal Revenue Code of 1986, as amended. A
200 REIT is allowed a dividend distributed deduction if the dividend
201 distributions meet the requirements of Section 857 or are
202 otherwise deductible under Section 858 or 860, federal Internal
203 Revenue Code of 1986, as amended. In addition:

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

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

213 (iii) A holding corporation receiving a dividend
214 from a REIT shall not be allowed the deduction in Section
215 27-7-15(4)(t).

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

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

224 (o) **Contributions to college savings trust fund**
225 **accounts.** Contributions or payments to a Mississippi Affordable
226 College Savings Program account are deductible as provided under
227 Section 37-155-113. Payments made under a prepaid tuition
228 contract entered into under the Mississippi Prepaid Affordable

229 College Tuition Program are deductible as provided under Section
230 37-155-17.

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

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

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

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

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

244 3. Royalty, patent, technical and copyright
245 fees;

246 4. Licensing fees; and

247 5. Other similar expenses and costs.

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

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

258 (iv) "Related member" means an entity or person
259 that, with respect to the taxpayer during all or any portion of
260 the taxable year, is a related entity, a component member as
261 defined in the Internal Revenue Code, or is an entity or a person

262 to or from whom there is attribution of stock ownership in
263 accordance with Section 1563(e) of the Internal Revenue Code.

264 (v) "Related entity" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

321 (i) The deduction for state income taxes paid or
322 other taxes allowed for federal purposes in lieu of state income
323 taxes paid;

324 (ii) The deduction for gaming losses from gaming
325 establishments;

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

328 (iv) The deduction for taxes collected by gaming
329 establishments pursuant to Section 27-7-903.

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

335 (i) Three Thousand Four Hundred Dollars
336 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
337 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
338 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
339 in the case of married individuals filing a joint or combined
340 return;

341 (ii) One Thousand Seven Hundred Dollars
342 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
343 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
344 Three Hundred Dollars (\$2,300.00) for each calendar year
345 thereafter in the case of married individuals filing separate
346 returns;

347 (iii) Three Thousand Four Hundred Dollars
348 (\$3,400.00) in the case of a head of family; or

349 (iv) Two Thousand Three Hundred Dollars
350 (\$2,300.00) in the case of an individual who is not married.

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

358 (c) A nonresident individual shall be allowed the same
359 individual nonbusiness deductions as are authorized for resident
360 individuals in paragraph (a) or (b) of this subsection; however,

361 the nonresident individual is entitled only to that proportion of
362 the individual nonbusiness deductions as his net income from
363 sources within the State of Mississippi bears to his total or
364 entire net income from all sources.

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

367 **SECTION 2.** Section 27-7-71, Mississippi Code of 1972, is
368 amended as follows:

369 27-7-71. (1) A taxpayer who feels aggrieved at any action
370 of the commissioner under Section 27-7-49, 27-7-51 or 27-7-53 may
371 appeal to the board of review, as legally constituted and
372 authorized by Section 27-7-79, for a hearing in the matter within
373 thirty (30) days from the date of said action. The board of
374 review shall grant a hearing thereon at the earliest practical
375 date. At said hearing, the board of review shall try the issues
376 presented, according to law and the facts, and shall within thirty
377 (30) days from the date of the hearing make a determination * * *
378 and notify the taxpayer of its findings. Any overpayment of tax
379 determined by the approved order of the board of review shall be
380 credited, or refunded, to the taxpayer. Any tax deficiency,
381 including any penalty and interest, determined by the approved
382 order of the board of review shall be paid by the taxpayer within
383 thirty (30) days from the date of notification to the taxpayer,
384 and, if the deficiency is not paid within the thirty-day period,
385 the commissioner shall proceed to collect the deficiency under the
386 provisions of Sections 27-7-55 through 27-7-67 * * *; provided,
387 that within the thirty-day period the taxpayer may appeal to the
388 State Tax Commission from the decision of the board of review, as
389 hereinafter set out.

390 (2) A taxpayer who feels aggrieved at any decision by the
391 board of review, may appeal to the State Tax Commission by
392 petition, in writing, within thirty (30) days from the date of the
393 decision, for a hearing upon the action or decision of the board

394 of review. In the petition the taxpayer shall set forth the
395 reasons such hearing should be granted. The State Tax Commission
396 shall promptly consider the petition, grant the hearing, and
397 notify the petitioner of the time and place fixed for the hearing.
398 In any hearing before the State Tax Commission, two (2) members
399 constitute a quorum. At the hearing, the State Tax Commission
400 shall try the issues presented, according to the law and the
401 facts, and shall, as soon as practical thereafter, notify the
402 taxpayer of its determination. Any overpayment of tax which the
403 State Tax Commission may determine to have been paid shall be
404 credited or refunded to the taxpayer. Any tax deficiency,
405 including any penalty and interest, determined by the State Tax
406 Commission shall be paid within thirty (30) days from the date of
407 notification of the taxpayer, and if the deficiency is not paid
408 within said thirty-day period, the State Tax Commission shall
409 proceed to collect the deficiency under the provisions of Sections
410 27-7-55 through 27-7-67; provided that within said thirty-day
411 period the taxpayer may appeal from the decision of the State Tax
412 Commission as hereinafter set out.

413 **SECTION 3.** Section 27-13-43, Mississippi Code of 1972, is
414 amended as follows:

415 27-13-43. (1) A taxpayer who feels aggrieved at any action
416 of the commissioner under Section 27-13-23 or 27-13-25, may appeal
417 to the board of review, as legally constituted and authorized by
418 Section 27-13-65, for a hearing in the matter within thirty (30)
419 days from the date of the action. The board of review shall grant
420 a hearing thereon at the earliest practical date. At the hearing,
421 the board of review shall try the issues presented, according to
422 law and the facts, and shall within thirty (30) days from the date
423 of said hearing make a determination * * * and notify the taxpayer
424 of its findings. Any overpayment of tax determined by the * * *
425 order of the board of review shall be credited, or refunded, to
426 the taxpayer. Any tax deficiency, including any penalty and

427 interest, determined by the approved order of the board of review
428 shall be paid by the taxpayer within thirty (30) days from the
429 date of notification to the taxpayer and if the deficiency is not
430 paid within the thirty-day period, the commissioner shall proceed
431 to collect the deficiency under the provisions of Sections
432 27-13-29 through 27-13-41 * * *; provided, that within the
433 thirty-day period the taxpayer may appeal to the State Tax
434 Commission from the decision of the board of review, as
435 hereinafter set out.

436 (2) A taxpayer who feels aggrieved at any decision by the
437 board of review, may appeal to the State Tax Commission by
438 petition, in writing, within thirty (30) days from the date of the
439 decision, for a hearing upon the action or decision of the board
440 of review. In the petition the taxpayer shall set forth the
441 reasons such hearing should be granted. The State Tax Commission
442 shall promptly consider the petition, grant the hearing, and
443 notify the petitioner of the time and place fixed for the hearing.
444 In any hearing before the State Tax Commission, two (2) members
445 constitute a quorum. At the hearing, the State Tax Commission
446 shall try the issues presented, according to the law and the
447 facts, and shall, as soon as practical thereafter, notify the
448 taxpayer of its determination. Any overpayment of tax which the
449 State Tax Commission may determine to have been paid shall be
450 credited or refunded to the taxpayer. Any tax deficiency,
451 including any penalty and interest, determined by the State Tax
452 Commission shall be paid within thirty (30) days from the date of
453 notification of the taxpayer, and if the deficiency is not paid
454 within the thirty-day period, the State Tax Commission shall
455 proceed to collect the deficiency under the provisions of Sections
456 27-13-29 through 27-13-41, provided that within said thirty-day
457 period the taxpayer may appeal from the decision of the State Tax
458 Commission as hereinafter set out.

459 **SECTION 4.** Section 1 of this act shall take effect and be in
460 force from and after January 1, 2005; the remainder of this act
461 shall take effect and be in force from and after July 1, 2005.