

By: Representative Calhoun

To: Ways and Means

HOUSE BILL NO. 264

1 AN ACT TO AMEND SECTION 27-7-5, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE THAT NET INCOME OF NONRESIDENTS DERIVED FROM PROPERTY,
 3 ACTIVITY AND OTHER SOURCES WITHIN MISSISSIPPI IS SUBJECT TO THE
 4 STATE INCOME TAX; TO AMEND SECTION 27-7-23, MISSISSIPPI CODE OF
 5 1972, TO REVISE THE DEFINITION OF THE TERM "DOING BUSINESS" FOR
 6 PURPOSES OF THE STATE INCOME TAX LAW; TO AMEND SECTION 27-7-17,
 7 MISSISSIPPI CODE OF 1972, TO DEFINE THE TERM "VALID BUSINESS
 8 PURPOSE" UNDER THE STATE INCOME TAX LAW FOR PURPOSES OF
 9 RESTRICTIONS ON THE DEDUCTION OF CERTAIN INTANGIBLE EXPENSES AND
 10 INTEREST INCURRED IN CONNECTION WITH TRANSACTIONS WITH RELATED
 11 MEMBERS AND TO REVISE CERTAIN PROVISIONS REGARDING THE DEDUCTION;
 12 AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 27-7-5, Mississippi Code of 1972, is
 15 amended as follows:

16 27-7-5. (1) There is hereby assessed and levied, to be
 17 collected and paid as hereinafter provided, for the calendar year
 18 1983 and fiscal years ending during the calendar year 1983 and all
 19 taxable years thereafter, upon the entire net income of every
 20 resident individual, corporation, association, trust or estate, in
 21 excess of the credits provided, a tax at the following rates:



22 (a) (i) Through calendar year 2017, on the first Five
23 Thousand Dollars (\$5,000.00) of taxable income, or any part
24 thereof, the rate shall be three percent (3%);

25 (ii) For calendar year 2018, on the first One
26 Thousand Dollars (\$1,000.00) of taxable income there shall be no
27 tax levied, and on the next Four Thousand Dollars (\$4,000.00) of
28 taxable income, or any part thereof, the rate shall be three
29 percent (3%);

30 (iii) For calendar year 2019, on the first Two
31 Thousand Dollars (\$2,000.00) of taxable income there shall be no
32 tax levied, and on the next Three Thousand Dollars (\$3,000.00) of
33 taxable income, or any part thereof, the rate shall be three
34 percent (3%);

35 (iv) For calendar year 2020, on the first Three
36 Thousand Dollars (\$3,000.00) of taxable income there shall be no
37 tax levied, and on the next Two Thousand Dollars (\$2,000.00) of
38 taxable income, or any part thereof, the rate shall be three
39 percent (3%);

40 (v) For calendar year 2021, on the first Four
41 Thousand Dollars (\$4,000.00) of taxable income there shall be no
42 tax levied, and on the next One Thousand Dollars (\$1,000.00) of
43 taxable income, or any part thereof, the rate shall be three
44 percent (3%);



45 (vi) For calendar year 2022 and all taxable years
46 thereafter, there shall be no tax levied on the first Five
47 Thousand Dollars (\$5,000.00) of taxable income;

48 (b) On taxable income in excess of Five Thousand
49 Dollars (\$5,000.00) up to and including Ten Thousand Dollars
50 (\$10,000.00), or any part thereof, the rate shall be four percent
51 (4%); and

52 (c) On all taxable income in excess of Ten Thousand
53 Dollars (\$10,000.00), the rate shall be five percent (5%).

54 (2) An S corporation, as defined in Section 27-8-3(1)(g),
55 shall not be subject to the income tax imposed under this section.

56 (3) A like tax is hereby imposed to be assessed, collected
57 and paid annually, except as hereinafter provided, at the rate
58 specified in this section and as hereinafter provided, upon and
59 with respect to the entire net income * * * derived from property,
60 activity or other sources within Mississippi, including all
61 property owned or sold, and from every business, trade or
62 occupation carried on in this state by individuals, corporations,
63 partnerships, trusts or estates, not residents of the State of
64 Mississippi.

65 (4) In the case of taxpayers having a fiscal year beginning
66 in a calendar year with a rate in effect that is different than
67 the rate in effect for the next calendar year and ending in the
68 next calendar year, the tax due for that taxable year shall be
69 determined by:



70 (a) Computing for the full fiscal year the amount of
71 tax that would be due under the rates in effect for the calendar
72 year in which the fiscal year begins; and

73 (b) Computing for the full fiscal year the amount of
74 tax that would be due under the rates in effect for the calendar
75 year in which the fiscal year ends; and

76 (c) Applying to the tax computed under paragraph (a)
77 the ratio which the number of months falling within the earlier
78 calendar year bears to the total number of months in the fiscal
79 year; and

80 (d) Applying to the tax computed under paragraph (b)
81 the ratio which the number of months falling within the later
82 calendar year bears to the total number of months within the
83 fiscal year; and

84 (e) Adding to the tax determined under paragraph (c)
85 the tax determined under paragraph (d) the sum of which shall be
86 the amount of tax due for the fiscal year.

87 **SECTION 2.** Section 27-7-23, Mississippi Code of 1972, is
88 amended as follows:

89 27-7-23. (a) **Definitions.**

90 (1) "Doing business" means the operation of any
91 business enterprise or activity that results in * * * financial
92 profit or economic gain from property, activity or other sources
93 within Mississippi, including, but not limited to, the following:



94 (A) The regular maintenance of an office or other
95 place of business in Mississippi; or

96 (B) The regular maintenance in Mississippi of an
97 inventory of merchandise or material for sale, distribution or
98 manufacture, regardless of whether kept on the premises of the
99 taxpayer or otherwise; or

100 (C) The * * * regular sale or * * * distribution
101 of * * * products or services to customers in Mississippi * * *
102 that receive the products or services in Mississippi; or

103 (D) The regular rendering of service to clients or
104 customers in Mississippi in person or by agents * * *, employees
105 or independent contractors conducting business in Mississippi; or

106 (E) The regular solicitation of business from
107 potential customers in Mississippi; or

108 (* * *F) The owning, renting or operating of
109 business or income-producing property, real or personal, in
110 Mississippi; or

111 (G) The issuance of credit, debit or travel and
112 entertainment cards to customers in Mississippi; or

113 (* * *H) The performing of contracts, prime or
114 sublet work, for the construction, repair or renovation of real or
115 personal property * * *; or

116 (I) The regular performance of services outside
117 Mississippi from which the benefits are received within
118 Mississippi; or



119 (J) Entering into franchising or licensing
120 agreements, selling or otherwise disposing of franchises and
121 licenses by a franchisor or licensor to its franchisee or licensee
122 in Mississippi; or

123 (K) The regular conduct of transactions with
124 customers in Mississippi involving intangible personal property,
125 including, but not limited to, loans or the extension of credit,
126 resulting in receipts flowing to the nonresident or foreign
127 taxpayer from within Mississippi.

128 (2) "Business income" means income of any type or
129 class, and from any activity that meets the relationship described
130 in the transactional test or the functional test described in this
131 paragraph (2). The classification of income by occasionally used
132 labels, including, but not limited to, manufacturing income,
133 compensation for services, sales income interest, dividends,
134 rents, royalties, gains, operating income, and nonoperating income
135 shall not be considered when determining whether income is
136 business or nonbusiness income. All income of the taxpayer is
137 business income unless clearly classifiable as nonbusiness income.
138 A taxpayer seeking to overcome a classification of income as
139 business income must establish by a preponderance of the evidence
140 that the income has been incorrectly classified.

141 (A) Transactional test. Business income includes
142 income arising from transactions and activity in the regular
143 course of the taxpayer's trade or business.



144 (i) If the transaction or activity is in the
145 regular course of the taxpayer's trade or business, part of which
146 trade or business is conducted within Mississippi, the resulting
147 income of the transaction or activity is business income for
148 Mississippi. Income may be business income even though the actual
149 transaction or activity that gives rise to the income does not
150 occur in Mississippi.

151 (ii) For a transaction or activity to be in
152 the regular course of the taxpayer's trade or business, the
153 transactions or activity need not be one that frequently occurs in
154 the trade or business, although most frequently occurring
155 transactions or activities shall be considered to be in the
156 regular course of a trade or business. It is sufficient to
157 classify a transaction or activity as being in the regular course
158 of a trade or business if it is reasonable to conclude
159 transactions of that type are customary in the kind of trade or
160 business being conducted or are within the scope of what the trade
161 or business does.

162 (B) Functional test. Business income includes
163 income from tangible and intangible property if the acquisition,
164 management and/or disposition of the property constitute integral
165 parts of the taxpayer's regular trade or business operation.

166 (i) Under the functional test, business
167 income need not be derived from transactions or activities that
168 are in the regular course of the taxpayer's own particular trade



169 or business. It shall be sufficient if the property from which
170 the income is derived is or was an integral, functional, necessary
171 or operative component of the taxpayer's trade or business
172 operations * * * deriving from income, property, activity or other
173 sources within this state.

174 (ii) Income that is derived from isolated
175 sales, leases, assignments, licenses and other infrequently
176 occurring dispositions, transfers or transactions involving
177 property, including transactions made in liquidation or the
178 winding up of business is business income if the property is or
179 was used in the taxpayer's trade or business operation. Income
180 from the licensing of intangible assets, such as patents,
181 copyrights, trademarks, service marks, goodwill, know-how, trade
182 secrets and similar assets, that were developed or acquired for
183 use by the taxpayer in his trade or business operations,
184 constitute business income whether the licensing itself
185 constituted the operation of a trade or business and whether the
186 taxpayer remains in the same trade or business from or for which
187 the intangible asset was developed or acquired.

188 (iii) Under the functional test, income from
189 intangible property is business income when the intangible
190 property serves an operating function, as opposed to solely an
191 investment function. The relevant inquiry shall focus on whether
192 the property is or was held in furtherance of the taxpayer's trade
193 or business, that is, on the objective characteristics of the



194 intangible property's use or acquisition and its relation to the
195 taxpayer and the taxpayer's activities. The functional test is
196 not satisfied where the holding of the property is limited solely
197 to an investment function as in the case where the holding of the
198 property is limited to mere financial betterment of the taxpayer
199 in general.

200 (iv) If the property is or was held in
201 furtherance of the taxpayer's trade or business beyond mere
202 financial betterment, then income from the property may be
203 business income even though the actual transaction or activity
204 involving the property that gives rise to the income does not
205 occur in Mississippi.

206 (v) If, with respect to an item of property,
207 a taxpayer takes a deduction from business income that is
208 apportioned to Mississippi, or includes that item of property in
209 the property factor, it is presumed that the item of property is
210 or was integral to the taxpayer's trade or business operations.
211 No presumption arises from the absence of any of this action.

212 (vi) Application of the functional test is
213 generally unaffected by the form of the property. Income arising
214 from intangible property is business income when the intangible
215 property itself or the underlying value of the intangible property
216 is or was an integral, functional, necessary or operative
217 component to the taxpayer's trade or business operation.

218 Therefore, while treatment of income derived from transactions



219 involving intangible property as business income may be supported
220 by a finding that the issuer of the intangible property and the
221 taxpayer are engaged in the same trade or business, establishment
222 of such a relationship is not the exclusive basis for concluding
223 that the income constitutes business income. It is sufficient to
224 support a finding of business income if the holding of the
225 intangible property served an operational rather than an
226 investment function.

227 (3) "Nonbusiness income" means all income that does not
228 meet the definition of business income.

229 (4) "Commercial domicile" means the principal place
230 from which the trade or business of the taxpayer is directed or
231 managed.

232 (5) "State" means any state of the United States, the
233 District of Columbia, the Commonwealth of Puerto Rico, any
234 territory or possession of the United States, and any foreign
235 country or political subdivision thereof.

236 (b) **Nonresident individuals, partnerships, trusts and**
237 **estates.**

238 (1) The tax imposed by this article shall apply to the
239 entire net income of a taxable nonresident derived from
240 employment, trade, business, professional * * * service or
241 personal service in Mississippi, or * * * otherwise doing business
242 in Mississippi as defined in subsection (a)(1) of this section,
243 including the rental of real or personal property located within



244 this state or for use herein and including the sale or exchange or
245 other disposition of tangible or intangible property having a
246 situs in Mississippi.

247 (2) Income derived from trade, business or other
248 commercial activity shall be taxed to the extent that it is
249 derived from * * * property, activity or other sources within this
250 state. Mississippi net income shall be determined in the manner
251 prescribed by the commissioner for the allocation and/or
252 apportionment of income of foreign corporations having income from
253 sources both within and without the state.

254 (3) A taxable nonresident shall be allowed to deduct
255 expenses, interest, taxes, losses, bad debts, depreciation and
256 similar business expenses only to the extent that they are
257 allowable under this article and are attributable to the
258 production of income allocable to and taxable by the State of
259 Mississippi. As to allowable deductions essentially personal in
260 nature, such as contributions to charitable organizations, medical
261 expenses, taxes, interest and the optional standard deduction,
262 such taxable nonresident shall be allowed deductions therefor in
263 the ratio that the net income from sources within Mississippi
264 bears to the total net income from all sources of such taxable
265 nonresident, computed as if such taxable nonresident was a
266 resident of Mississippi.

267 (c) **Foreign corporations, associations, organizations and**
268 **other entities.**



269 (1) Corporations and organizations required to file.
270 All foreign corporations and other organizations which have
271 obtained a certificate of authority from the Secretary of State to
272 do business in Mississippi, or corporations or organizations which
273 are in fact doing business in Mississippi, are subject to the
274 income tax levy and are required to file annual income tax returns
275 unless the corporation or organization is specifically exempt from
276 tax by this article.

277 (2) Allocation and apportionment of income.

278 (A) Except as provided in Sections 27-7-24,
279 27-7-24.1, 27-7-24.3, 27-7-24.5, 27-7-24.7 and 27-7-24.8,
280 Mississippi Code of 1972, any corporation or organization having
281 business income from business activity which is taxable both
282 within and without this state shall allocate and apportion its net
283 business income as prescribed by regulations enacted by the
284 commissioner. Income from services shall be apportioned to the
285 state where the benefits of the service are received. If the
286 business income of the corporation is derived solely from property
287 owned * * *, business done or services performed in this state and
288 the corporation is not taxable in another state, the entire
289 business income shall be allocated to this state. A corporation
290 is taxable in another state if, in that state the corporation is
291 subject to a net income tax, or a franchise tax measured by net
292 income, or if that state has jurisdiction to subject the



293 corporation to a net income tax regardless of whether the state
294 does or does not subject the corporation to a net income tax.

295 (B) If the allocation and apportionment provisions
296 of this section or regulations enacted by the commissioner do not
297 fairly represent the extent of the taxpayer's business activity in
298 this state, the taxpayer may petition for, or the commissioner may
299 require, in respect to all or any part of the taxpayer's business
300 activity, if reasonable:

301 (i) Separate accounting;

302 (ii) The exclusion of any one or more of the
303 factors;

304 (iii) The inclusion of one or more additional
305 factors which will fairly represent the taxpayer's business
306 activity in this state; or

307 (iv) The employment of any other method to
308 effectuate an equitable allocation and apportionment of the
309 taxpayer's income.

310 (C) In any instance in which a taxpayer requests
311 or the commissioner requires the use of any of the alternative
312 apportionment methods in subparagraph (B) of this paragraph, the
313 party requesting or requiring the method shall bear the burden of
314 proving by preponderance of the evidence in any administrative or
315 judicial proceeding that the methods set forth in this section or
316 the commissioner's regulations do not fairly represent the extent
317 of the taxpayer's business activity in this state and that the



318 proposed method more fairly represents that activity than any
319 other reasonable method available. The alternative apportionment
320 authority specified in this subparagraph (D) is intended to be
321 invoked only in limited and unique, nonrecurring circumstances
322 where the standard apportionment provisions contained in the
323 statutes and regulations produce unanticipated results that do not
324 fairly represent the extent of the taxpayer's business activity in
325 this state.

326 (D) The commissioner shall be prohibited from
327 assessing any penalties related to a deficiency arising from
328 requiring the use of an alternative apportionment method under
329 subparagraph (B) of this paragraph unless the commissioner shall
330 establish by preponderance of the evidence that the taxpayer's
331 method was without reasonable basis or was not in accordance with
332 existing statutes or regulations.

333 (3) Nonbusiness income. Rents and royalties from real
334 or tangible personal property, capital gains, interest, dividends,
335 or patent or copyright royalties, to the extent that they
336 constitute nonbusiness income, shall be allocated as follows:

337 (A) Net rents and royalties from real property are
338 allocable to the state in which the property is located.

339 (B) Net rents and royalties from tangible personal
340 property are allocable to the state in which the property is used,
341 or to this state in their entirety if the corporation's commercial
342 domicile is in this state and the corporation is not organized



343 under the laws of or taxable in the state in which the property is
344 utilized.

345 (C) Capital gains and losses from sales of real
346 property are allocable to the state in which the property is
347 located.

348 (D) Capital gains and losses from sales of
349 tangible personal property are allocable to the state in which the
350 property is located, or to this state if the corporation's
351 commercial domicile is in this state and the corporation is not
352 taxable in the state in which the property had a situs.

353 (E) Capital gains and losses from sales of
354 intangible personal property are allocable to the state of the
355 corporation's commercial domicile.

356 (F) Interest and dividends are allocable to the
357 state of the corporation's commercial domicile.

358 (G) Patent and copyright royalties are allocable
359 to the state in which the patent or copyright is utilized by the
360 payer, or to this state if and to the extent that the patent or
361 copyright is utilized by the payer in a state in which the
362 corporation is not taxable and the corporation's commercial
363 domicile is in this state.

364 (H) Any other nonbusiness income shall be
365 allocated as prescribed by the commissioner.

366 (I) All expenses connected with earning
367 nonbusiness income, such as interest, taxes, general and



368 administrative expenses and such other expenses relating to the
369 production of nonbusiness income, shall be deducted from gross
370 nonbusiness income. Nonbusiness interest expense shall be
371 computed by using the ratio of nonbusiness assets to total assets
372 applied to total interest expense.

373 (d) **Foreign lenders.**

374 (1) In the case of any foreign lender, (corporation,
375 association, organization, individual, partnership, trusts or
376 estates), other than: (A) a foreign insurance company subject to
377 certification by the Commissioner of Insurance, as provided by
378 Section 83-21-1 et seq.; or (B) a foreign lender qualified under
379 the general laws of this state to do business herein; or (C) a
380 foreign lender which maintains an office or place of business
381 within this state; or (D) lenders that sold properties in this
382 state and financed such sale and reported on the installment
383 method, interest income received or accrued on or after January 1,
384 1977, from loans secured by real estate or from lending on the
385 security of real estate located within this state shall be
386 excluded from Mississippi gross income and exempt from the
387 Mississippi income tax levy and the reporting requirements.

388 (2) In the case of any foreign lender exempted in
389 paragraph (1) of this subsection, interest income received on any
390 loan finalized or consummated after January 1, 1977, shall be
391 excluded from Mississippi gross income and the net profits derived



392 therefrom shall be exempt from the Mississippi income tax levy for
393 the life of such loan.

394 (e) **Insurance companies.** Insurance companies, other than
395 life insurance companies, deriving premium income from within and
396 without the state, may determine their Mississippi net income from
397 underwriting by apportioning to this state a part of their total
398 net underwriting income by such processes or formulas of general
399 apportionment as are prescribed by the commissioner; provided that
400 a company adopting this method of reporting for any year must
401 adhere to said method of reporting for subsequent years, unless
402 permission is granted by the commissioner to change to a different
403 method of reporting; and provided that all affiliated companies of
404 the same group shall use the same method of reporting.

405 (f) **Bond requirements.** Any individual or corporation
406 subject to the tax imposed by this article, engaged in the
407 business of performing contracts which may require the payment of
408 net income taxes, may be required by the commissioner, before
409 entering into the performance of any contract or contracts the
410 consideration of which is more than Ten Thousand Dollars
411 (\$10,000.00), to execute and file a good and valid bond with a
412 surety company authorized to do business in this state, or with
413 sufficient sureties to be approved by the commissioner,
414 conditioned that all taxes which may accrue to the State of
415 Mississippi will be paid when due. Provided, however, that such
416 bond shall not exceed five percent (5%) of the total contracts



417 entered into during the taxable period, and, provided further,
418 that any taxpayer, in lieu of furnishing such bond, may pay the
419 maximum sum required herein as advance payment of taxes due on the
420 net income realized from any contract or contracts performed or
421 completed in this state.

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

424 27-7-17. In computing taxable income, there shall be allowed
425 as deductions:

426 (1) **Business deductions.**

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



442 (b) **Interest.** All interest paid or accrued during the
443 taxable year on business indebtedness, except interest upon the
444 indebtedness for the purchase of tax-free bonds, or any stocks,
445 the dividends from which are nontaxable under the provisions of
446 this article; provided, however, in the case of securities
447 dealers, interest payments or accruals on loans, the proceeds of
448 which are used to purchase tax-exempt securities, shall be
449 deductible if income from otherwise tax-free securities is
450 reported as income. Investment interest expense shall be limited
451 to investment income. Interest expense incurred for the purchase
452 of treasury stock, to pay dividends, or incurred as a result of an
453 undercapitalized affiliated corporation may not be deducted unless
454 an ordinary and necessary business purpose can be established to
455 the satisfaction of the commissioner. For the purposes of this
456 paragraph, the phrase "interest upon the indebtedness for the
457 purchase of tax-free bonds" applies only to the indebtedness
458 incurred for the purpose of directly purchasing tax-free bonds and
459 does not apply to any other indebtedness incurred in the regular
460 course of the taxpayer's business. Any corporation, association,
461 organization or other entity taxable under Section 27-7-23(c)
462 shall allocate interest expense as provided in Section
463 27-7-23(c) (3) (I).

464 (c) **Taxes.** Taxes paid or accrued within the taxable
465 year, except state and federal income taxes, excise taxes based on
466 or measured by net income, estate and inheritance taxes, gift



467 taxes, cigar and cigarette taxes, gasoline taxes, and sales and
468 use taxes unless incurred as an item of expense in a trade or
469 business or in the production of taxable income. In the case of
470 an individual, taxes permitted as an itemized deduction under the
471 provisions of subsection (3)(a) of this section are to be claimed
472 thereunder.

473 (d) **Business losses.**

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

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

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

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



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

499 (h) **Contributions or gifts.** Except as otherwise
500 provided in paragraph (p) of this subsection or subsection (3) (a)
501 of this section for individuals, contributions or gifts made by
502 corporations within the taxable year to corporations,
503 organizations, associations or institutions, including Community
504 Chest funds, foundations and trusts created solely and exclusively
505 for religious, charitable, scientific or educational purposes, or
506 for the prevention of cruelty to children or animals, no part of
507 the net earnings of which inure to the benefit of any private
508 stockholder or individual. This deduction shall be allowed in an
509 amount not to exceed twenty percent (20%) of the net income. Such
510 contributions or gifts shall be allowable as deductions only if
511 verified under rules and regulations prescribed by the
512 commissioner, with the approval of the Governor. Contributions
513 made in any form other than cash shall be allowed as a deduction,
514 subject to the limitations herein provided, in an amount equal to
515 the actual market value of the contributions at the time the
516 contribution is actually made and consummated.



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

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

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

537 (i) The plan or trust be irrevocable.

538 (ii) The plan or trust constitute a part of a
539 pension plan, stock bonus plan, disability or death-benefit plan,
540 or profit-sharing plan for the exclusive benefit of some or all of
541 the employer's employees and/or officers, or their beneficiaries,



542 for the purpose of distributing the corpus and income of the plan
543 or trust to such employees and/or officers, or their
544 beneficiaries.

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

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

555 (1) **Net operating loss carrybacks and carryovers.** A
556 net operating loss for any taxable year ending after December 31,
557 1993, and taxable years thereafter, shall be a net operating loss
558 carryback to each of the three (3) taxable years preceding the
559 taxable year of the loss. If the net operating loss for any
560 taxable year is not exhausted by carrybacks to the three (3)
561 taxable years preceding the taxable year of the loss, then there
562 shall be a net operating loss carryover to each of the fifteen
563 (15) taxable years following the taxable year of the loss
564 beginning with any taxable year after December 31, 1991.

565 For any taxable year ending after December 31, 1997, the
566 period for net operating loss carrybacks and net operating loss



567 carryovers shall be the same as those established by the Internal
568 Revenue Code and the rules, regulations, rulings and
569 determinations promulgated thereunder as in effect at the taxable
570 year end or on December 31, 2000, whichever is earlier.

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

580 The term "net operating loss," for the purposes of this
581 paragraph, shall be the excess of the deductions allowed over the
582 gross income; provided, however, the following deductions shall
583 not be allowed in computing same:

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

586 (ii) No personal exemption deduction shall be
587 allowed.

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



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

601 (m) **Amortization of pollution or environmental control**
602 **facilities.** Allowance of deduction. Every taxpayer, at his
603 election, shall be entitled to a deduction for pollution or
604 environmental control facilities to the same extent as that
605 allowed under the Internal Revenue Code and the rules,
606 regulations, rulings and determinations promulgated thereunder.

607 (n) **Dividend distributions - real estate investment**
608 **trusts.** "Real estate investment trust" (hereinafter referred to
609 as REIT) shall have the meaning ascribed to such term in Section
610 856 of the federal Internal Revenue Code of 1986, as amended. A
611 REIT is allowed a dividend distributed deduction if the dividend
612 distributions meet the requirements of Section 857 or are
613 otherwise deductible under Section 858 or 860, federal Internal
614 Revenue Code of 1986, as amended. In addition:

615 (i) A dividend distributed deduction shall only be
616 allowed for dividends paid by a publicly traded REIT. A qualified



617 REIT subsidiary shall be allowed a dividend distributed deduction
618 if its owner is a publicly traded REIT.

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

624 (iii) A holding corporation receiving a dividend
625 from a REIT shall not be allowed the deduction in Section
626 27-7-15(4)(t).

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

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

635 (o) **Contributions to college savings trust fund**
636 **accounts.** Contributions or payments to a Mississippi Affordable
637 College Savings Program account are deductible as provided under
638 Section 37-155-113. Payments made under a prepaid tuition
639 contract entered into under the Mississippi Prepaid Affordable
640 College Tuition Program are deductible as provided under Section
641 37-155-17.



642 (p) **Contributions of human pharmaceutical products.** To
643 the extent that a "major supplier" as defined in Section
644 27-13-13(2) (d) contributes human pharmaceutical products in excess
645 of Two Hundred Fifty Million Dollars (\$250,000,000.00) as
646 determined under Section 170 of the Internal Revenue Code, the
647 charitable contribution limitation associated with those donations
648 shall follow the federal limitation but cannot result in the
649 Mississippi net income being reduced below zero.

650 (q) **Contributions to ABLE trust fund accounts.**
651 Contributions or payments to a Mississippi Achieving a Better Life
652 Experience (ABLE) Program account are deductible as provided under
653 Section 43-28-13.

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

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

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

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

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



667 3. Royalty, patent, technical and copyright
668 fees;

669 4. Licensing fees; and

670 5. Other similar expenses and costs.

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

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

681 (iv) "Related member" means an entity or person
682 that, with respect to the taxpayer during all or any portion of
683 the taxable year, is a related entity, a component member as
684 defined in the Internal Revenue Code, or is an entity or a person
685 to or from whom there is attribution of stock ownership in
686 accordance with Section 1563(e) of the Internal Revenue Code.

687 (v) "Related entity" means:

688 1. A stockholder who is an individual or a
689 member of the stockholder's family, as defined in regulations
690 prescribed by the commissioner, if the stockholder and the members
691 of the stockholder's family own, directly, indirectly,



692 beneficially or constructively, in the aggregate, at least fifty
693 percent (50%) of the value of the taxpayer's outstanding stock;

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

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

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

711 (vi) "Valid business purpose" means one or more
712 business purposes that alone or in combination constitute the
713 motivation for some business activity or transaction, which
714 activity or transaction improves, apart from tax effects, the
715 economic position of the taxpayer, as further defined by
716 regulation.



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

722 (c) The adjustments required by this subsection shall
723 not apply to such portion of interest expenses and costs and
724 intangible expenses and costs that the taxpayer can establish
725 meets one (1) of the following:

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

729 (ii) * * * The transaction giving rise to the
730 interest expenses and costs or intangible expenses and costs must
731 have a valid business purpose and economic substance and contain
732 terms and conditions comparable to a similar arms-length
733 transaction between unrelated parties. Tax avoidance must not be
734 a significant motivation of entering into the transaction. The
735 related member involved in the transaction must not be primarily
736 engaged in the acquisition, use, maintenance or management,
737 ownership, sale, exchange or any other disposition of intangible
738 property. If the development, purchase of or other costs related
739 to the intangible property giving rise to the payment were shared
740 in any way by the party making the payment, the party making the
741 payment must have been compensated at a fair market, arms-length



742 price for such costs. If the party making the payment was not so
743 compensated, the interest expenses and costs or intangible
744 expenses and costs are not deductible.

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

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

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

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

759 (i) The deduction for state income taxes paid or
760 other taxes allowed for federal purposes in lieu of state income
761 taxes paid;

762 (ii) The deduction for gaming losses from gaming
763 establishments;

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



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

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

773 (i) Three Thousand Four Hundred Dollars
774 (\$3,400.00) through calendar year 1997, Four Thousand Two Hundred
775 Dollars (\$4,200.00) for the calendar year 1998 and Four Thousand
776 Six Hundred Dollars (\$4,600.00) for each calendar year thereafter
777 in the case of married individuals filing a joint or combined
778 return;

779 (ii) One Thousand Seven Hundred Dollars
780 (\$1,700.00) through calendar year 1997, Two Thousand One Hundred
781 Dollars (\$2,100.00) for the calendar year 1998 and Two Thousand
782 Three Hundred Dollars (\$2,300.00) for each calendar year
783 thereafter in the case of married individuals filing separate
784 returns;

785 (iii) Three Thousand Four Hundred Dollars
786 (\$3,400.00) in the case of a head of family; or

787 (iv) Two Thousand Three Hundred Dollars
788 (\$2,300.00) in the case of an individual who is not married.

789 In the case of a husband and wife living together, having
790 separate incomes, and filing combined returns, the standard



791 deduction authorized may be divided in any manner they choose. In
792 the case of separate returns by a husband and wife, the standard
793 deduction shall not be allowed to either if the taxable income of
794 one of the spouses is determined without regard to the standard
795 deduction.

796 (c) A nonresident individual shall be allowed the same
797 individual nonbusiness deductions as are authorized for resident
798 individuals in paragraph (a) or (b) of this subsection; however,
799 the nonresident individual is entitled only to that proportion of
800 the individual nonbusiness deductions as his net income from
801 sources within the State of Mississippi bears to his total or
802 entire net income from all sources.

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

805 **SECTION 4.** This act shall take effect and be in force from
806 and after January 1, 2019.

