

By: Senator(s) Bryan

To: Finance

SENATE BILL NO. 2739

1 AN ACT TO AMEND SECTION 27-7-29, MISSISSIPPI CODE OF 1972, TO
2 EXEMPT INSURANCE COMPANIES FROM INCOME TAX IN ORDER TO SIMPLIFY
3 THE PROCEDURES USED BY THE STATE TAX COMMISSION WHEN CALCULATING
4 THE INSURANCE PREMIUM TAX LIABILITY OF INSURANCE COMPANIES, WHICH
5 ARE ALLOWED TO CREDIT THE NET AMOUNT OF INCOME TAX PAID FOR THE
6 PRECEDING CALENDAR YEAR AGAINST INSURANCE PREMIUM TAX LIABILITY;
7 TO AMEND SECTIONS 27-7-23 AND 27-15-115, MISSISSIPPI CODE OF 1972,
8 TO CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED
9 PURPOSES.

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

11 SECTION 1. Section 27-7-29, Mississippi Code of 1972, is
12 amended as follows:

13 27-7-29. The following organizations shall be exempt from
14 taxation under this article:

15 (1) Fraternal beneficiary societies, orders or associations.

16 (2) Mutual savings banks, domestic or foreign when organized
17 and operated on a nonprofit basis and for public purposes; and
18 farm loan associations when organized and operated on a nonprofit
19 basis and for public purposes.

20 (3) Cemetery corporations; religious, charitable,
21 educational or scientific associations or institutions, including
22 any community chest, funds or foundations, organized and operated
23 exclusively for religious, charitable, scientific or educational
24 purposes, or for the prevention of cruelty to children or animals,
25 no part of the net earnings of which inures to the benefit of any
26 private stockholder or individual.

27 (4) Business leagues, labor organizations, agricultural or
28 horticultural associations, chambers of commerce, or boards of
29 trade not organized for profit, and no part of the net earnings of

30 which inures to the benefit of any private stockholder or
31 individual.

32 (5) Civic leagues and social clubs or organizations not
33 organized for profit, but operated exclusively for the promotion
34 of social welfare.

35 (6) Clubs organized and operated exclusively for pleasure,
36 recreation and other nonprofitable purposes, no part of the net
37 earnings of which inures to the benefit of any private stockholder
38 or member.

39 (7) Farmers and fruit growers cooperatives or other like
40 organizations organized and operated as sales agents for the
41 purpose of marketing the products of members and turning back to
42 them the proceeds of sales, less the necessary selling expenses
43 and on the basis of the quantity of produce furnished by them, and
44 other nonprofit agricultural associations organized and operated
45 under the provisions of the cooperative marketing laws of this
46 state. Corporations that are treated as cooperatives for federal
47 income tax purposes will be exempt from income taxation under this
48 chapter to the same extent as provided for federal income tax
49 purposes.

50 (8) Nonprofit cooperative electric power associations or
51 corporations, or like associations, when organized and operated
52 for public purposes and when no part of the income inures to the
53 benefit of any private stockholder or individual.

54 (9) Any nonprofit corporation that is required to be
55 organized and formed for the purpose of operating and managing the
56 state's prison industries.

57 (10) Insurance companies that are qualified with and
58 regulated by the Commissioner of Insurance.

59 SECTION 2. Section 27-7-23, Mississippi Code of 1972, is
60 amended as follows:

61 27-7-23. (a) **Definitions.**

62 (1) "Doing business" means the operation of any
63 business enterprise or activity in Mississippi for financial
64 profit or economic gain, including, but not limited to, the
65 following:

66 (A) The regular maintenance of an office or other

67 place of business in Mississippi; or

68 (B) The regular maintenance in Mississippi of an
69 inventory of merchandise or material for sale, distribution or
70 manufacture, regardless of whether kept on the premises of the
71 taxpayer or otherwise; or

72 (C) The selling or distributing of merchandise to
73 customers in Mississippi directly from a company-owned or operated
74 vehicle when title to the merchandise is transferred from the
75 seller or distributor to the customer at the time of the sale or
76 distribution (transient selling); or

77 (D) The regular rendering of service to clients or
78 customers in Mississippi in person or by agents or employees; or

79 (E) The owning, renting or operating of business
80 or income-producing property, real or personal, in Mississippi; or

81 (F) The performing of contracts, prime or sublet
82 work, for the construction, repair or renovation of real or
83 personal property.

84 (2) "Business income" means income arising from
85 transactions and activity in the regular course of the taxpayer's
86 trade or business and includes income from tangible and intangible
87 property if the acquisition, management and disposition of the
88 property constitute integral parts of the taxpayer's regular trade
89 or business operations.

90 (3) "Nonbusiness income" means all income other than
91 business income.

92 (4) "Commercial domicile" means the principal place
93 from which the trade or business of the taxpayer is directed or
94 managed.

95 (5) "State" means any state of the United States, the
96 District of Columbia, the Commonwealth of Puerto Rico, any
97 territory or possession of the United States, and any foreign
98 country or political subdivision thereof.

99 (b) **Nonresident individuals, partnerships, trusts and**

100 **estates.**

101 (1) The tax imposed by this article shall apply to the
102 entire net income of a taxable nonresident derived from
103 employment, trade, business, professional, personal service or
104 other activity for financial gain or profit, performed or carried
105 on within Mississippi, including the rental of real or personal
106 property located within this state or for use herein and including
107 the sale or exchange or other disposition of tangible or
108 intangible property having a situs in Mississippi.

109 (2) Income derived from trade, business or other
110 commercial activity shall be taxed to the extent that it is
111 derived from such activity within this state. Mississippi net
112 income shall be determined by direct or separate accounting of
113 such income if the commissioner is satisfied that such separate
114 accounting reflects correctly the income attributable to this
115 state, but otherwise it shall be determined in the same manner as
116 prescribed by the commissioner for the allocation and
117 apportionment of income of foreign corporations having income from
118 sources both within and without the state.

119 (3) A taxable nonresident shall be allowed to deduct
120 expenses, interest, taxes, losses, bad debts, depreciation and
121 similar business expenses only to the extent that they are
122 allowable under this article and are attributable to the
123 production of income allocable to and taxable by the State of
124 Mississippi. As to allowable deductions essentially personal in
125 nature, such as contributions to charitable organizations, medical
126 expenses, taxes, interest and the optional standard deduction,
127 such taxable nonresident shall be allowed deductions therefor in
128 the ratio that the net income from sources within Mississippi
129 bears to the total net income from all sources of such taxable
130 nonresident, computed as if such taxable nonresident were a
131 resident of Mississippi.

132 (c) **Foreign corporations, associations, organizations and**

133 **other entities.**

134 (1) Corporations and organizations required to file.
135 All foreign corporations and other organizations which have
136 obtained a certificate of authority from the Secretary of State to
137 do business in Mississippi, or corporations or organizations which
138 are in fact doing business in Mississippi, are subject to the
139 income tax levy and are required to file annual income tax returns
140 unless the corporation or organization is specifically exempt from
141 tax by this article.

142 (2) Allocation and apportionment of income. Except as
143 provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and
144 27-7-24.7, Mississippi Code of 1972, any corporation or
145 organization having income from business activity which is taxable
146 both within and without this state shall allocate and apportion
147 its net income as provided in this section.

148 (A) A corporation is taxable in another state if:
149 (i) In that state the corporation is subject
150 to a net income tax, or a franchise tax measured by net income, or
151 (ii) That state has jurisdiction to subject
152 the corporation to a net income tax regardless of whether, in
153 fact, the state does or does not.

154 (B) All business income of the corporation,
155 including business income from rents, royalties, capital gains,
156 interest and dividends which constitute integral parts of the
157 corporation's regular trade or business activities or operations,
158 shall be allocated or apportioned as follows:

159 (i) If the business income of the corporation
160 is derived solely from property owned or business done in this
161 state and the corporation is not taxable in another state, the
162 entire business income shall be allocated to this state.

163 (ii) If the business income of the
164 corporation is derived in part from property owned or business
165 done in this state and in part from property owned or business

166 done without the state and the corporation is taxable both within
167 and without this state, only that portion of the business income
168 which is attributable to the property owned or business done
169 within this state shall be allocated to this state. Income which
170 is in like manner attributable to property owned or business done
171 in another state shall be allocated to that state if taxable in
172 that state. Business income derived from intangible property of
173 any kind or nature shall be treated as income from sources within
174 this state if the evidence of ownership of such property has
175 acquired a business, commercial or actual situs in this state.
176 Business income derived from unitary multistate activities which
177 cannot be allocated to any state shall be apportioned to this
178 state by use of formulas prescribed by the commissioner.

179 (iii) Any corporation, taxable both within
180 and without this state, which maintains or could maintain books of
181 account detailing allocation of receipts and expenditures
182 reflecting clearly the business income attributable to property
183 owned or business done in this state, shall determine Mississippi
184 net business income on the basis of direct or separate accounting.
185 A proportionate part of nonallocable general and administrative
186 business expenses may be deducted by use of a formula prescribed
187 by the commissioner. If the commissioner finds that direct or
188 separate accounting of Mississippi net business income does not
189 reflect the true income attributable to property owned or business
190 done in Mississippi, or, if by reason of the unitary multistate
191 activities of the corporation direct or separate accounting for
192 Mississippi net business income is impossible, the net business
193 income shall be apportioned to this state by use of formulas of
194 apportionment prescribed by the commissioner.

195 (3) Except as provided in Sections 27-7-24, 27-7-24.1,
196 27-7-24.3, 27-7-24.5 and 27-7-24.7, Mississippi Code of 1972, for
197 the purpose of any formula which includes a sales factor, sales
198 shall be assigned to Mississippi based on the following

199 conditions:

200 (A) Sales of tangible personal property, including
201 interest, carrying charges, deferred charges and delivery charges
202 incident to such sales, are in this state if:

203 (i) The property is delivered or shipped to a
204 purchaser, or to the designee of the purchaser, other than the
205 United States government, within this state regardless of the
206 f.o.b. point or other conditions of the sale; or

207 (ii) The property is shipped from an office,
208 store, warehouse, factory, or other place of storage in this
209 state, and (a) the purchaser is the United States government, or
210 (b) the taxpayer is not taxable in the state of the purchaser.

211 (B) Other sales or rentals are assignable to
212 Mississippi if:

213 (i) The receipts are from real or tangible
214 personal property located in Mississippi; or

215 (ii) The receipts are from intangible
216 property and are received from sources within Mississippi; or

217 (iii) The receipts are from services and the
218 income-producing activities are in Mississippi.

219 (4) Nonbusiness income. Rents and royalties from real
220 or tangible personal property, capital gains, interest, dividends,
221 or patent or copyright royalties, to the extent that they
222 constitute nonbusiness income, shall be allocated as follows:

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

225 (B) Net rents and royalties from tangible personal
226 property are allocable to the state in which the property is used,
227 or to this state in their entirety if the corporation's commercial
228 domicile is in this state and the corporation is not organized
229 under the laws of or taxable in the state in which the property is
230 utilized.

231 (C) Capital gains and losses from sales of real

232 property are allocable to the state in which the property is
233 located.

234 (D) Capital gains and losses from sales of
235 tangible personal property are allocable to the state in which the
236 property is located, or to this state if the corporation's
237 commercial domicile is in this state and the corporation is not
238 taxable in the state in which the property had a situs.

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

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

244 (G) Patent and copyright royalties are allocable
245 to the state in which the patent or copyright is utilized by the
246 payer, or to this state if and to the extent that the patent or
247 copyright is utilized by the payer in a state in which the
248 corporation is not taxable and the corporation's commercial
249 domicile is in this state.

250 (H) All expenses connected with earning
251 nonbusiness income, such as interest, taxes, general and
252 administrative expenses and such other expenses relating to the
253 production of nonbusiness income, shall be deducted from gross
254 nonbusiness income. Nonbusiness interest expense shall be
255 computed by using the ratio of nonbusiness assets to total assets
256 applied to total interest expense.

257 (d) **Foreign lenders.**

258 (1) In the case of any foreign lender, (corporation,
259 association, organization, individual, partnership, trusts or
260 estates), other than: (A) A foreign insurance company subject to
261 certification by the Commissioner of Insurance, as provided by
262 Section 83-21-1 et seq.; or (B) A foreign lender qualified under
263 the general laws of this state to do business herein; or (C) A
264 foreign lender which maintains an office or place of business

265 within this state; or (D) Lenders that sold properties in this
266 state and financed such sale and reported on the installment
267 method, interest income received or accrued on or after January 1,
268 1977, from loans secured by real estate or from lending on the
269 security of real estate located within this state shall be
270 excluded from Mississippi gross income and exempt from the
271 Mississippi income tax levy and the reporting requirements.

272 (2) In the case of any foreign lender exempted in
273 paragraph (1) of this subsection, interest income received on any
274 loan finalized or consummated after January 1, 1977, shall be
275 excluded from Mississippi gross income and the net profits derived
276 therefrom shall be exempt from the Mississippi income tax levy for
277 the life of such loan.

278 (e) **Insurance companies.** Insurance companies, other than
279 life insurance companies, deriving premium income from within and
280 without the state, may determine their Mississippi net income from
281 underwriting by apportioning to this state a part of their total
282 net underwriting income by such processes or formulas of general
283 apportionment as are prescribed by the commissioner; provided that
284 a company adopting this method of reporting for any year must
285 adhere to said method of reporting for subsequent years, unless
286 permission is granted by the commissioner to change to a different
287 method of reporting; and provided that all affiliated companies of
288 the same group shall use the same method of reporting.

289 From and after January 1, 1999, insurance companies are
290 exempt from income taxation as provided for in Section 27-7-29.

291 (f) **Bond requirements.** Any individual or corporation
292 subject to the tax imposed by this article, engaged in the
293 business of performing contracts which may require the payment of
294 net income taxes, may be required by the commissioner, before
295 entering into the performance of any contract or contracts the
296 consideration of which is more than Ten Thousand Dollars
297 (\$10,000.00), to execute and file a good and valid bond with a

298 surety company authorized to do business in this state, or with
299 sufficient sureties to be approved by the commissioner,
300 conditioned that all taxes which may accrue to the State of
301 Mississippi will be paid when due. Provided, however, that such
302 bond shall not exceed five percent (5%) of the total contracts
303 entered into during the taxable period, and, provided further,
304 that any taxpayer, in lieu of furnishing such bond, may pay the
305 maximum sum required herein as advance payment of taxes due on the
306 net income realized from any contract or contracts performed or
307 completed in this state.

308 SECTION 3. Section 27-15-115, Mississippi Code of 1972, is
309 amended as follows:

310 27-15-115. In addition to all other taxes authorized by law,
311 insurance companies shall pay the license and privilege taxes
312 imposed by Sections 27-15-81 and 27-15-83, the taxes imposed by
313 Sections 27-15-103 through 27-15-117, ad valorem taxes on real
314 estate and tangible personal property, * * * sales tax levied on a
315 vendor with a requirement of adding it to the sales price and use
316 tax levied on the cost of tangible personal property purchased
317 outside this state for use within this state.

318 SECTION 4. Nothing in this act shall affect or defeat any
319 claim, assessment, appeal, suit, right or cause of action for
320 taxes due or accrued under the income tax laws before the date
321 which this act become effective, whether such claims, assessments,
322 appeals, suits or actions have been begun before the date on which
323 this act becomes effective or are begun thereafter; and the
324 provisions of the income tax laws are expressly continued in full
325 force, effect and operation for the purpose of the assessment,
326 collection and enrollment of liens for any taxes due or accrued
327 and the execution of any warrant under such laws before the date
328 on which this act becomes effective, and for the imposition of any
329 penalties, forfeitures or claims for failure to comply with such
330 laws.

331 SECTION 5. This act shall take effect and be in force from
332 and after January 1, 1999.