

By: Representative Williams

To: Ways and Means

HOUSE BILL NO. 576  
(As Passed the House)

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

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

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

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

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

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

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

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

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

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

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

(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

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

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

(3) Except as provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and 27-7-24.7, Mississippi Code of 1972, for the purpose of any formula which includes a sales factor, sales 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

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

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

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

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

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

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

**(d) Foreign lenders.**

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

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

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

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

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

(f) **Bond requirements.** Any individual or corporation subject to the tax imposed by this article, engaged in the business of performing contracts which may require the payment of net income taxes, may be required by the commissioner, before entering into the performance of any contract or contracts the consideration of which is more than Ten Thousand Dollars (\$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 to 27-15-117, ad valorem taxes on real estate  
314 and tangible personal property, \* \* \* sales tax levied on a vendor  
315 with a requirement of adding it to the sales price and use tax  
316 levied on the cost of tangible personal property purchased outside  
317 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 on  
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.