

By: Representative Williams

To: Ways and Means

HOUSE BILL NO. 578

1 AN ACT TO AMEND SECTION 27-7-23, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE METHOD OF DETERMINING NET BUSINESS INCOME OF FOREIGN
3 MANUFACTURERS; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 27-7-23, Mississippi Code of 1972, is
6 amended as follows:

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

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

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

14 (B) The regular maintenance in Mississippi of an
15 inventory of merchandise or material for sale, distribution or
16 manufacture, regardless of whether kept on the premises of the
17 taxpayer or otherwise; or

18 (C) The selling or distributing of merchandise to
19 customers in Mississippi directly from a company-owned or operated
20 vehicle when title to the merchandise is transferred from the
21 seller or distributor to the customer at the time of the sale or
22 distribution (transient selling); or

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

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

27 (F) The performing of contracts, prime or sublet
28 work, for the construction, repair or renovation of real or
29 personal property.

30 (2) "Business income" means income arising from
31 transactions and activity in the regular course of the taxpayer's
32 trade or business and includes income from tangible and intangible
33 property if the acquisition, management and disposition of the
34 property constitute integral parts of the taxpayer's regular trade
35 or business operations.

36 (3) "Nonbusiness income" means all income other than
37 business income.

38 (4) "Commercial domicile" means the principal place
39 from which the trade or business of the taxpayer is directed or
40 managed.

41 (5) "State" means any state of the United States, the
42 District of Columbia, the Commonwealth of Puerto Rico, any
43 territory or possession of the United States, and any foreign
44 country or political subdivision thereof.

45 (b) **Nonresident individuals, partnerships, trusts and**
46 **estates.**

47 (1) The tax imposed by this article shall apply to the
48 entire net income of a taxable nonresident derived from
49 employment, trade, business, professional, personal service or
50 other activity for financial gain or profit, performed or carried
51 on within Mississippi, including the rental of real or personal
52 property located within this state or for use herein and including
53 the sale or exchange or other disposition of tangible or
54 intangible property having a situs in Mississippi.

55 (2) Income derived from trade, business or other
56 commercial activity shall be taxed to the extent that it is
57 derived from such activity within this state. Mississippi net
58 income shall be determined by direct or separate accounting of
59 such income if the commissioner is satisfied that such separate

60 accounting reflects correctly the income attributable to this
61 state, but otherwise it shall be determined in the same manner as
62 prescribed by the commissioner for the allocation and
63 apportionment of income of foreign corporations having income from
64 sources both within and without the state.

65 (3) A taxable nonresident shall be allowed to deduct
66 expenses, interest, taxes, losses, bad debts, depreciation and
67 similar business expenses only to the extent that they are
68 allowable under this article and are attributable to the
69 production of income allocable to and taxable by the State of
70 Mississippi. As to allowable deductions essentially personal in
71 nature, such as contributions to charitable organizations, medical
72 expenses, taxes, interest and the optional standard deduction,
73 such taxable nonresident shall be allowed deductions therefor in
74 the ratio that the net income from sources within Mississippi
75 bears to the total net income from all sources of such taxable
76 nonresident, computed as if such taxable nonresident were a
77 resident of Mississippi.

78 (c) **Foreign corporations, associations, organizations and**
79 **other entities.**

80 (1) Corporations and organizations required to file.
81 All foreign corporations and other organizations which have
82 obtained a certificate of authority from the Secretary of State to
83 do business in Mississippi, or corporations or organizations which
84 are in fact doing business in Mississippi, are subject to the
85 income tax levy and are required to file annual income tax returns
86 unless the corporation or organization is specifically exempt from
87 tax by this article.

88 (2) Allocation and apportionment of income. Except as
89 provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and
90 27-7-24.7, Mississippi Code of 1972, any corporation or
91 organization having income from business activity which is taxable
92 both within and without this state shall allocate and apportion

93 its net income as provided in this section.

94 (A) A corporation is taxable in another state if:

95 (i) In that state the corporation is subject
96 to a net income tax, or a franchise tax measured by net income, or

97 (ii) That state has jurisdiction to subject
98 the corporation to a net income tax regardless of whether, in
99 fact, the state does or does not.

100 (B) All business income of the corporation,
101 including business income from rents, royalties, capital gains,
102 interest and dividends which constitute integral parts of the
103 corporation's regular trade or business activities or operations,
104 shall be allocated or apportioned as follows:

105 (i) If the business income of the corporation
106 is derived solely from property owned or business done in this
107 state and the corporation is not taxable in another state, the
108 entire business income shall be allocated to this state.

109 (ii) If the business income of the
110 corporation is derived in part from property owned or business
111 done in this state and in part from property owned or business
112 done without the state and the corporation is taxable both within
113 and without this state, only that portion of the business income
114 which is attributable to the property owned or business done
115 within this state shall be allocated to this state. Income which
116 is in like manner attributable to property owned or business done
117 in another state shall be allocated to that state if taxable in
118 that state. Business income derived from intangible property of
119 any kind or nature shall be treated as income from sources within
120 this state if the evidence of ownership of such property has
121 acquired a business, commercial or actual situs in this state.
122 Business income derived from unitary multistate activities which
123 cannot be allocated to any state shall be apportioned to this
124 state by use of formulas prescribed by the commissioner.

125 (iii) Any corporation, taxable both within

126 and without this state, which maintains or could maintain books of
127 account detailing allocation of receipts and expenditures
128 reflecting clearly the business income attributable to property
129 owned or business done in this state, shall determine Mississippi
130 net business income on the basis of direct or separate accounting.
131 A proportionate part of nonallocable general and administrative
132 business expenses may be deducted by use of a formula prescribed
133 by the commissioner. If the commissioner finds that direct or
134 separate accounting of Mississippi net business income does not
135 reflect the true income attributable to property owned or business
136 done in Mississippi, or, if by reason of the unitary multistate
137 activities of the corporation direct or separate accounting for
138 Mississippi net business income is impossible, the net business
139 income shall be apportioned to this state by use of formulas of
140 apportionment prescribed by the commissioner; however, for tax
141 years ending on or after December 31, 2000, any such formula shall
142 provide that the business income of manufacturers shall be
143 apportioned to this state by multiplying the business income by a
144 fraction as follows:

145 1. For the tax year ending on or after
146 December 31, 2000, but before December 31, 2001, the numerator
147 shall be the property factor plus the payroll factor plus one and
148 one-fifth (1-1/5) of the sales factor and the denominator shall be
149 three and one-fifth (3-1/5);

150 2. For the tax year ending on or after
151 December 31, 2001, but before December 31, 2002, the numerator
152 shall be the property factor plus the payroll factor plus one and
153 two-fifths (1-2/5) of the sales factor and the denominator shall
154 be three and two-fifths (3-2/5);

155 3. For the tax year ending on or after
156 December 31, 2002, but before December 31, 2003, the numerator
157 shall be the property factor plus the payroll factor plus one and
158 three-fifths (1-3/5) of the sales factor and the denominator shall

159 be three and three-fifths (3-3/5);

160 4. For the tax year ending on or after
161 December 31, 2003, but before December 31, 2004, the numerator
162 shall be the property factor plus the payroll factor plus one and
163 four-fifths (1-4/5) of the sales factor and the denominator shall
164 be three and four-fifths (3-4/5); and

165 5. For the tax year ending on or after
166 December 31, 2004, and for each tax year thereafter, the numerator
167 shall be the property factor plus the payroll factor plus twice
168 the sales factor and the denominator shall be four (4).

169 (3) Except as provided in Sections 27-7-24, 27-7-24.1,
170 27-7-24.3, 27-7-24.5 and 27-7-24.7, Mississippi Code of 1972, for
171 the purpose of any formula which includes a sales factor, sales
172 shall be assigned to Mississippi based on the following
173 conditions:

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

177 (i) The property is delivered or shipped to a
178 purchaser, or to the designee of the purchaser, other than the
179 United States Government, within this state regardless of the
180 f.o.b. point or other conditions of the sale; or

181 (ii) The property is shipped from an office,
182 store, warehouse, factory, or other place of storage in this
183 state, and (a) the purchaser is the United States Government, or
184 (b) the taxpayer is not taxable in the state of the purchaser.

185 (B) Other sales or rentals are assignable to
186 Mississippi if:

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

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

191 (iii) The receipts are from services and the

192 income-producing activities are in Mississippi.

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

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

199 (B) Net rents and royalties from tangible personal
200 property are allocable to the state in which the property is used,
201 or to this state in their entirety if the corporation's commercial
202 domicile is in this state and the corporation is not organized
203 under the laws of or taxable in the state in which the property is
204 utilized.

205 (C) Capital gains and losses from sales of real
206 property are allocable to the state in which the property is
207 located.

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

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

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

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

224 (H) All expenses connected with earning

225 nonbusiness income, such as interest, taxes, general and
226 administrative expenses and such other expenses relating to the
227 production of nonbusiness income, shall be deducted from gross
228 nonbusiness income. Nonbusiness interest expense shall be
229 computed by using the ratio of nonbusiness assets to total assets
230 applied to total interest expense.

231 (d) **Foreign lenders.**

232 (1) In the case of any foreign lender, (corporation,
233 association, organization, individual, partnership, trusts or
234 estates), other than: (A) A foreign insurance company subject to
235 certification by the Commissioner of Insurance, as provided by
236 Section 83-21-1 et seq.; or (B) A foreign lender qualified under
237 the general laws of this state to do business herein; or (C) A
238 foreign lender which maintains an office or place of business
239 within this state; or (D) Lenders that sold properties in this
240 state and financed such sale and reported on the installment
241 method, interest income received or accrued on or after January 1,
242 1977, from loans secured by real estate or from lending on the
243 security of real estate located within this state shall be
244 excluded from Mississippi gross income and exempt from the
245 Mississippi income tax levy and the reporting requirements.

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

252 (e) **Insurance companies.** Insurance companies, other than
253 life insurance companies, deriving premium income from within and
254 without the state, may determine their Mississippi net income from
255 underwriting by apportioning to this state a part of their total
256 net underwriting income by such processes or formulas of general
257 apportionment as are prescribed by the commissioner; provided that

258 a company adopting this method of reporting for any year must
259 adhere to said method of reporting for subsequent years, unless
260 permission is granted by the commissioner to change to a different
261 method of reporting; and provided that all affiliated companies of
262 the same group shall use the same method of reporting.

263 (f) **Bond requirements.** Any individual or corporation
264 subject to the tax imposed by this article, engaged in the
265 business of performing contracts which may require the payment of
266 net income taxes, may be required by the commissioner, before
267 entering into the performance of any contract or contracts the
268 consideration of which is more than Ten Thousand Dollars
269 (\$10,000.00), to execute and file a good and valid bond with a
270 surety company authorized to do business in this state, or with
271 sufficient sureties to be approved by the commissioner,
272 conditioned that all taxes which may accrue to the State of
273 Mississippi will be paid when due. Provided, however, that such
274 bond shall not exceed five percent (5%) of the total contracts
275 entered into during the taxable period, and, provided further,
276 that any taxpayer, in lieu of furnishing such bond, may pay the
277 maximum sum required herein as advance payment of taxes due on the
278 net income realized from any contract or contracts performed or
279 completed in this state.

280 SECTION 2. This act shall take effect and be in force from
281 and after July 1, 1999.