

By: Minor

To: Finance

SENATE BILL NO. 3088
(As Passed the Senate)

1 AN ACT TO REQUIRE ENTITIES THAT ARE REQUIRED TO FILE AND
2 REPORT FOR FEDERAL INCOME TAX PURPOSES ON THE ACTIVITY CONDUCTED
3 IN MISSISSIPPI FOR QUALIFIED SUBCHAPTER S SUBSIDIARIES AND SINGLE
4 MEMBER LIMITED LIABILITY COMPANIES, SHALL BE REQUIRED TO FILE
5 MISSISSIPPI COMBINATION RETURNS OF INCOME AND FRANCHISE TAX; TO
6 AMEND SECTION 27-13-1, MISSISSIPPI CODE OF 1972, TO REVISE THE
7 DEFINITION OF THE TERM "DOING BUSINESS" IN THE CORPORATION
8 FRANCHISE TAX LAW TO PROVIDE THAT AN ENTITY THAT IS REQUIRED TO
9 FILE AND REPORT FOR FEDERAL INCOME TAX PURPOSES THE ACTIVITY
10 CONDUCTED BY CERTAIN SUBCHAPTER S SUBSIDIARIES AND CERTAIN LIMITED
11 LIABILITY CORPORATIONS SHALL BE CONSIDERED AS DOING BUSINESS IN
12 THIS STATE; TO AMEND SECTION 27-13-51, MISSISSIPPI CODE OF 1972,
13 TO PROVIDE THAT ENTITIES THAT ARE REQUIRED TO FILE AND REPORT FOR
14 FEDERAL INCOME TAX PURPOSES ON THE ACTIVITY CONDUCTED BY CERTAIN
15 SUBCHAPTER S SUBSIDIARIES AND CERTAIN LIMITED LIABILITY
16 CORPORATIONS AND SUCH SUBSIDIARIES AND COMPANIES SHALL BE JOINTLY
17 AND SEVERALLY LIABLE FOR FRANCHISE TAXES LEVIED BY THIS CHAPTER;
18 AND FOR RELATED PURPOSES.

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

20 SECTION 1. (1) An entity that is required to file and
21 report for federal income tax purposes the activity conducted in
22 Mississippi of a qualified subchapter S subsidiary, shall be
23 required to file a Mississippi combination return of S Corporation
24 income and franchise tax.

25 (2) An entity that is required to file and report for
26 federal income tax purposes on the activity conducted in
27 Mississippi of a single member limited liability company which is
28 not classified as a corporation, and thus disregarded, shall be
29 required to file a Mississippi combination return of corporation
30 income and franchise tax even if such entity is included in a
31 consolidated corporation income tax return filed for federal
32 purposes.

33 SECTION 2. Section 27-13-1, Mississippi Code of 1972, is
34 amended as follows:[WAN1]

35 27-13-1. The words, terms and phrases when used in this
36 chapter shall have the following meanings ascribed to them:

37 (a) "Commission" means the State Tax Commission of the
38 State of Mississippi.

39 (b) "Commissioner" means the Chairman of the State Tax
40 Commission.

41 (c) "Taxpayer" means any corporation, association or
42 joint stock company liable for or having paid any tax to the State
43 of Mississippi under the provisions of this chapter or any
44 corporation, association or joint stock company subject to the
45 provisions of this chapter.

46 (d) "Domestic," when applied to a corporation or
47 association, means created or organized under the laws of the
48 State of Mississippi.

49 (e) "Foreign," when applied to a corporation or
50 association, means created or organized under some authority other
51 than the laws of the State of Mississippi.

52 (f) "Accounting period" or "accounting year" means a
53 period of twelve (12) months ending on the last day of the month
54 of December, known as a calendar year, or a period of twelve (12)
55 months ending on the last day of any month other than December,
56 known as a fiscal year.

57 (g) "Corporation," "association" or "joint stock
58 company" means and includes each and every form of organization
59 for pecuniary gain, having authorized capital stock, whether with
60 or without par value, having privileges not possessed by
61 individuals or partnerships; and whether organized with or without
62 statutory authority; and may be referred to as "organizations."
63 When any form of organization is treated as a corporation for
64 federal income tax purposes it shall be treated as a corporation
65 for purposes of this chapter.

66 (h) "Doing business" means and includes each and every
67 act, power or privilege, including any income-producing

68 activities, exercised or enjoyed in this state as an incident to,
69 or by virtue of, the powers and privileges acquired by the nature
70 of such organization, whether the form of existence be corporate,
71 associate, joint stock company or common law trust. An entity
72 that is required to file and report for federal income tax
73 purposes the activity conducted in Mississippi of a qualified
74 subchapter S subsidiary shall be considered to be doing business
75 in this state for purposes of this chapter. An entity that is
76 required to file and report for federal income tax purposes on the
77 activity conducted in Mississippi of a single member limited
78 liability company which is not classified as a corporation, and
79 thus disregarded, shall be considered to be doing business in this
80 state for purposes of this chapter.

81 (i) "Holding corporation" means a corporation,
82 association or joint stock company: (i) owning capital stock of
83 one or more other corporations, associations or joint stock
84 companies, which stock ownership represents at least eighty
85 percent (80%) of the value and at least eighty percent (80%) of
86 the combined voting power of all classes of issued and outstanding
87 capital stock of such other corporation, association or joint
88 stock company; except that for purposes of this definition the
89 term "stock" does not include nonvoting stock which is limited and
90 preferred as to dividends; and (ii) deriving at least ninety-five
91 percent (95%) of its gross receipts from dividends, interest,
92 royalties, rents, services provided to members of an affiliated
93 group (as defined in Section 27-7-37(2)(d)) to the extent of the
94 cost of providing such services, and from such additional sources
95 as the commissioner may specify by regulation. The definition of
96 the various sources of gross receipts referred to herein shall be
97 governed by applicable provisions of Chapter 7, Title 27,
98 Mississippi Code of 1972, and regulations thereunder and shall
99 include only passive categories of receipts in the computation of
100 gross receipts.

101 (j) "Subsidiary corporation" means a corporation,
102 association or joint stock company of which at least eighty
103 percent (80%) of the value and at least eighty percent (80%) of
104 the combined voting power of all classes of its issued and
105 outstanding capital stock is owned by a holding corporation,
106 except that for purposes of this definition the term "stock" does
107 not include nonvoting stock which is limited and preferred as to
108 dividends.

109 (k) "Stock or securities" means any share of stock,
110 certificate of stock, or interest in a corporation, note, bond,
111 debenture, or evidence of indebtedness, or any evidence of an
112 interest in or right to subscribe to or purchase any of the
113 foregoing.

114 SECTION 3. Section 27-13-51, Mississippi Code of 1972, is
115 amended as follows:[WAN2]

116 27-13-51. (1) The tax provided by this chapter, together
117 with all interest, increases and penalties, is in addition to all
118 other taxes, and shall become, from the time it is due and
119 payable, a personal debt, from the organization liable to pay the
120 same, to the State of Mississippi.

121 (2) An entity that is required to file and report for
122 federal income tax purposes on the activity conducted in
123 Mississippi of a qualified subchapter S subsidiary which is
124 subject to income taxation in the manner prescribed in Section
125 27-8-7, and the qualified subchapter S subsidiary, shall each be
126 jointly and severally liable for franchise taxes levied by this
127 chapter together with damages and interest when such taxes are due
128 and unpaid.

129 (3) An entity that is required to file and report for
130 federal income tax purposes on the activity conducted in
131 Mississippi of a single member limited liability company which is
132 not classified as a corporation (and thus disregarded) which is
133 subject to tax in the manner prescribed in Section 79-29-112, and

134 the singly member limited liability company, shall each be jointly
135 and severally liable for franchise taxes levied by this chapter
136 together with damages and interest when such taxes are due and
137 unpaid.

138 SECTION 4. Section 1 of this act shall be codified in
139 Chapter 13, Title 27, Mississippi Code of 1972.

140 SECTION 5. This act shall take effect and be in force from
141 and after its passage.