

By: Senator(s) Minor

To: Finance

SENATE BILL NO. 2500

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.

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

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

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

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

(3) A taxable nonresident shall be allowed to deduct expenses, interest, taxes, losses, bad debts, depreciation and similar business expenses only to the extent that they are allowable under this article and are attributable to the production of income allocable to and taxable by the State of Mississippi. As to allowable deductions essentially personal in nature, such as contributions to charitable organizations, medical expenses, taxes, interest and the optional standard deduction, such taxable nonresident shall be allowed deductions therefor in

the ratio that the net income from sources within Mississippi bears to the total net income from all sources of such taxable nonresident, computed as if such taxable nonresident were a resident of Mississippi.

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

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

(2) Allocation and apportionment of income. 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, any corporation or organization having income from business activity which is taxable both within and without this state shall allocate and apportion its net income as provided in this section.

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

- (i) In that state the corporation is subject to a net income tax, or a franchise tax measured by net income; or
- (ii) That state has jurisdiction to subject the corporation to a net income tax regardless of whether, in fact, the state does or does not.

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

(i) If the business income of the corporation 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

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 conditions:

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

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

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

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

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

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

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

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

(A) Net rents and royalties from real property are 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.**

(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, 2001, insurance companies are 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, 2001.