To: Finance

MISSISSIPPI LEGISLATURE                       REGULAR SESSION 2001
By: Senator(s) Minor

SENATE BILL NO. 2500

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

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

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

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

  1. Fraternal beneficiary societies, orders or associations.
  2. Mutual savings banks, domestic or foreign when organized
     and operated on a nonprofit basis and for public purposes; and
  3. Cemetery corporations; religious, charitable,
     educational or scientific associations or institutions, including
     any community chest, funds or foundations, organized and operated
     exclusively for religious, charitable, scientific or educational
     purposes, or for the prevention of cruelty to children or animals,
     no part of the net earnings of which inures to the benefit of any
     private stockholder or individual.
  4. Business leagues, labor organizations, agricultural or
     horticultural associations, chambers of commerce, or boards of
     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 place of business in Mississippi; or

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

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

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

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

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

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

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

(4) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.
"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
state and the corporation is not taxable in another state, the entire business income shall be allocated to this state.

(ii) If the business income of the corporation is derived in part from property owned or business 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
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.
(B) Net rents and royalties from tangible personal property are allocable to the state in which the property is used, or to this state in their entirety if the corporation's commercial domicile is in this state and the corporation is not organized under the laws of or taxable in the state in which the property is utilized.

(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, 2001, 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 surety company authorized to do business in this state, or with sufficient sureties to be approved by the commissioner, conditioned that all taxes which may accrue to the State of Mississippi will be paid when due. Provided, however, that such bond shall not exceed five percent (5%) of the total contracts entered into during the taxable period, and, provided further, that any taxpayer, in lieu of furnishing such bond, may pay the maximum sum required herein as advance payment of taxes due on the net income realized from any contract or contracts performed or completed in this state.

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

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

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

SECTION 5. This act shall take effect and be in force from