

By: Senator(s) King, Chaney

To: Finance

SENATE BILL NO. 3168

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 WHO SELL PRINCIPALLY AT WHOLESALE PRICES; AND FOR
4 RELATED PURPOSES.

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

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

8 27-7-23. (a) **Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

89 (2) Allocation and apportionment of income. Except as
90 provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and
91 27-7-24.7, Mississippi Code of 1972, any corporation or
92 organization having income from business activity which is taxable

93 both within and without this state shall allocate and apportion
94 its net income as provided in this section.

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

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

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

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

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

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

126 (iii) Any corporation, taxable both within
127 and without this state, which maintains or could maintain books of
128 account detailing allocation of receipts and expenditures
129 reflecting clearly the business income attributable to property
130 owned or business done in this state, shall determine Mississippi
131 net business income on the basis of direct or separate accounting.
132 A proportionate part of nonallocable general and administrative
133 business expenses may be deducted by use of a formula prescribed
134 by the commissioner. If the commissioner finds that direct or
135 separate accounting of Mississippi net business income does not
136 reflect the true income attributable to property owned or business
137 done in Mississippi, or, if by reason of the unitary multistate
138 activities of the corporation direct or separate accounting for
139 Mississippi net business income is impossible, the net business
140 income shall be apportioned to this state by use of formulas of
141 apportionment prescribed by the commissioner; however, for tax
142 years ending on or after December 31, 2001, any such formula shall
143 provide that all business income of manufacturers selling
144 principally at wholesale shall be apportioned to this state by
145 multiplying the income by a fraction, the numerator of which shall
146 be the total sales of the manufacturer in this state during the
147 taxable year and the denominator of which shall be total sales of
148 the manufacturer everywhere during the taxable year.

149 (3) Except as provided in Sections 27-7-24, 27-7-24.1,
150 27-7-24.3, 27-7-24.5 and 27-7-24.7, Mississippi Code of 1972, for
151 the purpose of any formula which includes a sales factor, sales
152 shall be assigned to Mississippi based on the following
153 conditions:

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

157 (i) The property is delivered or shipped to a
158 purchaser, or to the designee of the purchaser, other than the

159 United States Government, within this state regardless of the
160 f.o.b. point or other conditions of the sale; or

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

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

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

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

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

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

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

179 (B) Net rents and royalties from tangible personal
180 property are allocable to the state in which the property is used,
181 or to this state in their entirety if the corporation's commercial
182 domicile is in this state and the corporation is not organized
183 under the laws of or taxable in the state in which the property is
184 utilized.

185 (C) Capital gains and losses from sales of real
186 property are allocable to the state in which the property is
187 located.

188 (D) Capital gains and losses from sales of
189 tangible personal property are allocable to the state in which the
190 property is located, or to this state if the corporation's

191 commercial domicile is in this state and the corporation is not
192 taxable in the state in which the property had a situs.

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

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

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

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

211 (d) **Foreign lenders.**

212 (1) In the case of any foreign lender, (corporation,
213 association, organization, individual, partnership, trusts or
214 estates), other than: (A) A foreign insurance company subject to
215 certification by the Commissioner of Insurance, as provided by
216 Section 83-21-1 et seq.; or (B) A foreign lender qualified under
217 the general laws of this state to do business herein; or (C) A
218 foreign lender which maintains an office or place of business
219 within this state; or (D) Lenders that sold properties in this
220 state and financed such sale and reported on the installment
221 method, interest income received or accrued on or after January 1,
222 1977, from loans secured by real estate or from lending on the
223 security of real estate located within this state shall be

224 excluded from Mississippi gross income and exempt from the
225 Mississippi income tax levy and the reporting requirements.

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

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

243 (f) **Bond requirements.** Any individual or corporation
244 subject to the tax imposed by this article, engaged in the
245 business of performing contracts which may require the payment of
246 net income taxes, may be required by the commissioner, before
247 entering into the performance of any contract or contracts the
248 consideration of which is more than Ten Thousand Dollars
249 (\$10,000.00), to execute and file a good and valid bond with a
250 surety company authorized to do business in this state, or with
251 sufficient sureties to be approved by the commissioner,
252 conditioned that all taxes which may accrue to the State of
253 Mississippi will be paid when due. Provided, however, that such
254 bond shall not exceed five percent (5%) of the total contracts
255 entered into during the taxable period, and, provided further,
256 that any taxpayer, in lieu of furnishing such bond, may pay the

257 maximum sum required herein as advance payment of taxes due on the
258 net income realized from any contract or contracts performed or
259 completed in this state.

260 SECTION 2. This act shall take effect and be in force from
261 and after July 1, 2001.