SENATE BILL NO. 3168

AN ACT TO AMEND SECTION 27-7-23, MISSISSIPPI CODE OF 1972, TO REVISE THE METHOD OF DETERMINING NET BUSINESS INCOME OF FOREIGN MANUFACTURERS WHO SELL PRINCIPALLY AT WHOLESALE PRICES; AND FOR RELATED PURPOSES.

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

SECTION 1. 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
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.

(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 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; however, for tax
years ending on or after December 31, 2001, any such formula shall
provide that all business income of manufacturers selling
principally at wholesale shall be apportioned to this state by
multiplying the income by a fraction, the numerator of which shall
be the total sales of the manufacturer in this state during the
taxable year and the denominator of which shall be total sales of
the manufacturer everywhere during the taxable year.

(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.

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