

By: Representative Watson

To: Ways and Means

HOUSE BILL NO. 1333

1 AN ACT TO AMEND SECTION 27-7-37, MISSISSIPPI CODE OF 1972, TO
2 ELIMINATE CONSOLIDATED FILINGS OF CORPORATE INCOME TAX RETURNS BY
3 AFFILIATED CORPORATIONS; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 27-7-37, Mississippi Code of 1972, is
6 amended as follows:

7 27-7-37. (1) Every corporation subject to taxation shall
8 make a separate return, stating specifically the items of its
9 gross income and the deductions and credits allowed by this
10 article. The return shall be signed by either the president,
11 vice-president, secretary or treasurer.

12 (2) (a) * * * Two (2) or more members of an affiliated
13 group of corporations, each taxable in Mississippi, may elect to
14 file a combined income tax return. * * * Corporations electing to
15 file combined returns under this section shall determine the
16 Mississippi net business income (or loss) on an individual
17 corporate member basis as required in Section 27-7-23 and, if
18 applicable, Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and
19 27-7-24.7. The Mississippi net business income (or loss) so
20 computed for each individual member shall be combined to determine
21 the Mississippi net business income (or loss) of the combined
22 group of affiliated * * * corporations. To the amount so
23 determined shall be added nonbusiness income of the combined
24 members directly allocable to Mississippi to determine Mississippi
25 taxable income.

26 * * * The commissioner may require a corporation taxable
27 under this article that is affiliated with one or more

28 corporations that are not taxable under this article to file a
29 combined return with the affiliated corporation or corporations if
30 he believes that the intercompany transactions of such taxable
31 corporation have resulted in the shifting of taxable income from
32 itself to another member or members of its affiliated group not
33 subject to tax under this article. Also, the commissioner may
34 require a group of affiliated corporations taxable under this
35 article to file a combined return if he believes that the
36 intercompany transactions of such corporations have resulted in
37 the shifting of taxable income between members of the included
38 affiliated group. In the event that such a combined return is
39 required, the net income or loss of each member of the group
40 required to be combined, shall be combined pursuant to regulations
41 prescribed by the commissioner to determine the total combined
42 taxable income and the Mississippi taxable income of the group.
43 The tax imposed by this article shall be computed and assessed
44 upon the Mississippi taxable income of the combined group which
45 shall be treated as the taxpayer.

46 (b) The privilege to file * * * combined returns shall
47 be limited to members of an affiliated group of corporations which
48 are subject to taxation under the provisions of this article. The
49 privilege of making a * * * combined return may be exercised only
50 if all corporations subject to taxation under this article which
51 were members of the affiliated group at any time during the
52 taxable year consent to a * * * combined return prior to the last
53 day prescribed by law for the filing of such return. The making
54 of a * * * combined return shall be considered as such consent.
55 In the case of a taxable corporation which is a member of the
56 affiliated group for a fractional part of the year, the * * *
57 combined return shall include the income of such corporation for
58 such part of the year as it is a member of the affiliated group.

59 (c) The commissioner shall prescribe such regulations
60 as he may deem necessary in order that the tax liability of any

61 affiliated group of corporations making a * * * combined return
62 and of each corporation in the group, both during and after the
63 period of affiliation, may be returned, determined, computed,
64 assessed, collected and adjusted, in such manner as clearly to
65 reflect the income tax liability and the various factors necessary
66 for the determination of such liability, and in order to prevent
67 avoidance of such tax liability.

68 (d) As used in this article, the term "affiliated
69 group" means one or more corporations connected through stock
70 ownership with a common parent corporation where at least eighty
71 percent (80%) of the voting power of all classes of stock and at
72 least eighty percent (80%) of each class of the nonvoting stock of
73 each of the member corporations, except the common parent
74 corporation, is owned directly by one or more of the other member
75 corporations; and the common parent corporation owns directly
76 stock possessing at least eighty percent (80%) of the voting power
77 of all classes of stock and at least eighty percent (80%) of each
78 class of the nonvoting stock of at least one (1) of the other
79 member corporations. As used in this subsection, the term "stock"
80 does not include nonvoting stock which is limited and preferred as
81 to dividends.

82 (e) If a corporation elects or is required to file
83 returns on a combined * * * basis, all subsequent returns shall be
84 made upon the same basis unless permission to change the basis is
85 granted by the commissioner, or unless the commissioner requires a
86 change in the basis.

87 (3) * * * If any foreign corporation has no office or place
88 of business in this state but has an agent in this state, the
89 returns shall be made by the agent.

90 (4) * * * In the case of a receiver, trustee in bankruptcy,
91 or assignees operating the property or business of a corporation,
92 such receiver, trustee or assignee shall make returns for such
93 corporation in the same manner and form as corporations are

94 required to make returns; and any tax due on the basis of such
95 returns shall be collected in the same manner as if collected from
96 the corporation of whose business or property they have custody or
97 control.

98 **SECTION 2.** This act shall take effect and be in force from
99 and after January 1, 2004.