

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.