

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2787

1 AN ACT TO AMEND SECTION 27-7-37, MISSISSIPPI CODE OF 1972, TO
2 REMOVE THE OPTION OF FILING CONSOLIDATED INCOME TAX RETURNS BY
3 CERTAIN AFFILIATED GROUPS OF CORPORATIONS; AND FOR RELATED
4 PURPOSES.

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

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

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

13 (2) * * * **Combined returns by affiliated corporations.**

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

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

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

61 (c) The commissioner shall prescribe such regulations
62 as he may deem necessary in order that the tax liability of any
63 affiliated group of corporations making a * * * combined return
64 and of each corporation in the group, both during and after the
65 period of affiliation, may be returned, determined, computed,
66 assessed, collected and adjusted, in such manner as clearly to
67 reflect the income tax liability and the various factors necessary
68 for the determination of such liability, and in order to prevent
69 avoidance of such tax liability.

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

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

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

92 (4) **Receiver; Trustee.** In the case of a receiver, trustee
93 in bankruptcy, or assignees operating the property or business of

94 a corporation, such receiver, trustee or assignee shall make
95 returns for such corporation in the same manner and form as
96 corporations are required to make returns; and any tax due on the
97 basis of such returns shall be collected in the same manner as if
98 collected from the corporation of whose business or property they
99 have custody or control.

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