

By: Representatives Smith, Sykes

To: Ways and Means

HOUSE BILL NO. 1699

1 AN ACT TO PROVIDE FOR THE METHOD OF APPORTIONMENT OF INCOME
2 FOR INCOME TAX PURPOSES OF A MAJOR MEDICAL LABORATORY SERVICE
3 BUSINESS; TO AMEND SECTION 27-7-23, MISSISSIPPI CODE OF 1972, IN
4 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** The following shall be codified as Section
7 27-7-24.9, Mississippi Code of 1972:

8 27-7-24.9. (1) For purposes of the income tax imposed by
9 this chapter, a major medical laboratory service business whose
10 business activity is taxable both within and without this state
11 shall apportion its business income (income which is includable in
12 the apportionable tax base) to this state by multiplying such
13 income by an apportionment percentage determined in accordance
14 with this section.

15 (2) The net business income which has not been allocated,
16 directly assigned or excluded shall be apportioned to Mississippi
17 by multiplying such business income by a single sales factor. The
18 sales factor is a fraction, the numerator of which is the receipts
19 from medical laboratory services and other receipts of the



20 taxpayer in this state during the taxable year, and the
21 denominator of which is the total receipts of the taxpayer within
22 and without this state during the taxable year.

23 (3) (a) Receipts attributable to medical laboratory
24 services are determined to be within Mississippi if the medical
25 laboratory services are provided on behalf of an individual or
26 patient whose service address is located in this state at the time
27 the service is performed.

28 (b) Receipts attributable to medical laboratory
29 services performed in this state shall be thrown back and sourced
30 to this state if, pursuant to the patient service address rule in
31 paragraph (a) of this subsection (3):

32 (i) The receipts are sourced to a state or local
33 jurisdiction in which the taxpayer is not subject to an income or
34 gross receipts tax (other than a general sales tax) during a given
35 taxable year, or

36 (ii) The company is subject to an income or gross
37 receipts tax in another state or local jurisdiction but the laws
38 of that jurisdiction do not source such receipts to that
39 jurisdiction.

40 For purposes of this paragraph (b), a company shall be considered
41 taxable in another state or local jurisdiction if it files a
42 separate company income or gross receipts tax return in that state
43 or local jurisdiction, it is included in a unitary or combined
44 group income or gross receipts tax return in that state or local



45 jurisdiction, or if the state or local jurisdiction has authority
46 to levy an income or gross receipts tax upon the company
47 regardless of whether that jurisdiction actually levies such a
48 tax.

49 (c) Any other receipts of the taxpayer not attributable
50 to medical laboratory services shall be sourced to this state
51 pursuant to regulations of the department.

52 (4) For purposes of this section:

53 (a) "Major Medical Laboratory Service Business" means a
54 company that performs laboratory testing and analysis for the
55 medical industry and that invests a minimum of Twenty-five Million
56 Dollars (\$25,000,000.00) in land, building, and/or equipment
57 located in Mississippi and creates two hundred eighty (280) new
58 full-time, direct jobs within three (3) years of start of
59 operations, as certified by the Mississippi Development Authority.

60 (b) "Medical Laboratory Services" means laboratory
61 testing and analysis performed for the medical industry.

62 (c) "Service address" means the physical location of
63 the doctor's office, clinic, or other medical facility requesting
64 the testing or analysis.

65 **SECTION 2.** Section 27-7-23, Mississippi Code of 1972, is
66 amended as follows:

67 27-7-23. (a) **Definitions.**

68 (1) "Doing business" means the operation of any
69 business enterprise or activity in Mississippi for financial



70 profit or economic gain, including, but not limited to, the
71 following:

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

74 (B) The regular maintenance in Mississippi of an
75 inventory of merchandise or material for sale, distribution or
76 manufacture, regardless of whether kept on the premises of the
77 taxpayer or otherwise; or

78 (C) The selling or distributing of merchandise to
79 customers in Mississippi directly from a company-owned or operated
80 vehicle when title to the merchandise is transferred from the
81 seller or distributor to the customer at the time of the sale or
82 distribution (transient selling); or

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

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

87 (F) The performing of contracts, prime or sublet
88 work, for the construction, repair or renovation of real or
89 personal property.

90 (2) "Business income" means income of any type or
91 class, and from any activity that meets the relationship described
92 in the transactional test or the functional test described in this
93 paragraph (2). The classification of income by occasionally used
94 labels, including, but not limited to, manufacturing income,



95 compensation for services, sales income interest, dividends,
96 rents, royalties, gains, operating income, and nonoperating income
97 shall not be considered when determining whether income is
98 business or nonbusiness income. All income of the taxpayer is
99 business income unless clearly classifiable as nonbusiness income.
100 A taxpayer seeking to overcome a classification of income as
101 business income must establish by a preponderance of the evidence
102 that the income has been incorrectly classified.

103 (A) Transactional test. Business income includes
104 income arising from transactions and activity in the regular
105 course of the taxpayer's trade or business.

106 (i) If the transaction or activity is in the
107 regular course of the taxpayer's trade or business, part of which
108 trade or business is conducted within Mississippi, the resulting
109 income of the transaction or activity is business income for
110 Mississippi. Income may be business income even though the actual
111 transaction or activity that gives rise to the income does not
112 occur in Mississippi.

113 (ii) For a transaction or activity to be in
114 the regular course of the taxpayer's trade or business, the
115 transactions or activity need not be one that frequently occurs in
116 the trade or business, although most frequently occurring
117 transactions or activities shall be considered to be in the
118 regular course of a trade or business. It is sufficient to
119 classify a transaction or activity as being in the regular course



120 of a trade or business if it is reasonable to conclude
121 transactions of that type are customary in the kind of trade or
122 business being conducted or are within the scope of what the trade
123 or business does.

124 (B) Functional test. Business income includes
125 income from tangible and intangible property if the acquisition,
126 management and/or disposition of the property constitute integral
127 parts of the taxpayer's regular trade or business operation.

128 (i) Under the functional test, business
129 income need not be derived from transactions or activities that
130 are in the regular course of the taxpayer's own particular trade
131 or business. It shall be sufficient if the property from which
132 the income is derived is or was an integral, functional, necessary
133 or operative component of the taxpayer's trade or business
134 operations, part of which trade or business is or was conducted
135 within this state.

136 (ii) Income that is derived from isolated
137 sales, leases, assignments, licenses and other infrequently
138 occurring dispositions, transfers or transactions involving
139 property, including transactions made in liquidation or the
140 winding up of business is business income if the property is or
141 was used in the taxpayer's trade or business operation. Income
142 from the licensing of intangible assets, such as patents,
143 copyrights, trademarks, service marks, goodwill, know-how, trade
144 secrets and similar assets, that were developed or acquired for



145 use by the taxpayer in his trade or business operations,
146 constitute business income whether the licensing itself
147 constituted the operation of a trade or business and whether the
148 taxpayer remains in the same trade or business from or for which
149 the intangible asset was developed or acquired.

150 (iii) Under the functional test, income from
151 intangible property is business income when the intangible
152 property serves an operating function, as opposed to solely an
153 investment function. The relevant inquiry shall focus on whether
154 the property is or was held in furtherance of the taxpayer's trade
155 or business, that is, on the objective characteristics of the
156 intangible property's use or acquisition and its relation to the
157 taxpayer and the taxpayer's activities. The functional test is
158 not satisfied where the holding of the property is limited solely
159 to an investment function as in the case where the holding of the
160 property is limited to mere financial betterment of the taxpayer
161 in general.

162 (iv) If the property is or was held in
163 furtherance of the taxpayer's trade or business beyond mere
164 financial betterment, then income from the property may be
165 business income even though the actual transaction or activity
166 involving the property that gives rise to the income does not
167 occur in Mississippi.

168 (v) If, with respect to an item of property,
169 a taxpayer takes a deduction from business income that is



170 apportioned to Mississippi, or includes that item of property in
171 the property factor, it is presumed that the item of property is
172 or was integral to the taxpayer's trade or business operations.
173 No presumption arises from the absence of any of this action.

174 (vi) Application of the functional test is
175 generally unaffected by the form of the property. Income arising
176 from intangible property is business income when the intangible
177 property itself or the underlying value of the intangible property
178 is or was an integral, functional, necessary or operative
179 component to the taxpayer's trade or business operation.

180 Therefore, while treatment of income derived from transactions
181 involving intangible property as business income may be supported
182 by a finding that the issuer of the intangible property and the
183 taxpayer are engaged in the same trade or business, establishment
184 of such a relationship is not the exclusive basis for concluding
185 that the income constitutes business income. It is sufficient to
186 support a finding of business income if the holding of the
187 intangible property served an operational rather than an
188 investment function.

189 (3) "Nonbusiness income" means all income that does not
190 meet the definition of business income.

191 (4) "Commercial domicile" means the principal place
192 from which the trade or business of the taxpayer is directed or
193 managed.



194 (5) "State" means any state of the United States, the
195 District of Columbia, the Commonwealth of Puerto Rico, any
196 territory or possession of the United States, and any foreign
197 country or political subdivision thereof.

198 (b) **Nonresident individuals, partnerships, trusts and**
199 **estates.**

200 (1) The tax imposed by this article shall apply to the
201 entire net income of a taxable nonresident derived from
202 employment, trade, business, professional, personal service or
203 other activity for financial gain or profit, performed or carried
204 on within Mississippi, including the rental of real or personal
205 property located within this state or for use herein and including
206 the sale or exchange or other disposition of tangible or
207 intangible property having a situs in Mississippi.

208 (2) Income derived from trade, business or other
209 commercial activity shall be taxed to the extent that it is
210 derived from such activity within this state. Mississippi net
211 income shall be determined in the manner prescribed by the
212 commissioner for the allocation and/or apportionment of income of
213 foreign corporations having income from sources both within and
214 without the state.

215 (3) A taxable nonresident shall be allowed to deduct
216 expenses, interest, taxes, losses, bad debts, depreciation and
217 similar business expenses only to the extent that they are
218 allowable under this article and are attributable to the



219 production of income allocable to and taxable by the State of
220 Mississippi. As to allowable deductions essentially personal in
221 nature, such as contributions to charitable organizations, medical
222 expenses, taxes, interest and the optional standard deduction,
223 such taxable nonresident shall be allowed deductions therefor in
224 the ratio that the net income from sources within Mississippi
225 bears to the total net income from all sources of such taxable
226 nonresident, computed as if such taxable nonresident was a
227 resident of Mississippi.

228 (c) **Foreign corporations, associations, organizations and**
229 **other entities.**

230 (1) Corporations and organizations required to file.
231 All foreign corporations and other organizations which have
232 obtained a certificate of authority from the Secretary of State to
233 do business in Mississippi, or corporations or organizations which
234 are in fact doing business in Mississippi, are subject to the
235 income tax levy and are required to file annual income tax returns
236 unless the corporation or organization is specifically exempt from
237 tax by this article.

238 (2) Allocation and apportionment of income.

239 (A) Except as provided in Sections 27-7-24,
240 27-7-24.1, 27-7-24.3, 27-7-24.5, 27-7-24.7 * * *, 27-7-24.8 and
241 27-7-24.9, Mississippi Code of 1972, any corporation or
242 organization having business income from business activity which
243 is taxable both within and without this state shall allocate and



244 apportion its net business income as prescribed by regulations
245 enacted by the commissioner. If the business income of the
246 corporation is derived solely from property owned or business done
247 in this state and the corporation is not taxable in another state,
248 the entire business income shall be allocated to this state. A
249 corporation is taxable in another state if, in that state the
250 corporation is subject to a net income tax, or a franchise tax
251 measured by net income, or if that state has jurisdiction to
252 subject the corporation to a net income tax regardless of whether
253 the state does or does not subject the corporation to a net income
254 tax.

255 (B) If the allocation and apportionment provisions
256 of this section or regulations enacted by the commissioner do not
257 fairly represent the extent of the taxpayer's business activity in
258 this state, the taxpayer may petition for, or the commissioner may
259 require, in respect to all or any part of the taxpayer's business
260 activity, if reasonable:

261 (i) Separate accounting;

262 (ii) The exclusion of any one or more of the
263 factors;

264 (iii) The inclusion of one or more additional
265 factors which will fairly represent the taxpayer's business
266 activity in this state; or



267 (iv) The employment of any other method to
268 effectuate an equitable allocation and apportionment of the
269 taxpayer's income.

270 (C) In any instance in which a taxpayer requests
271 or the commissioner requires the use of any of the alternative
272 apportionment methods in subparagraph (B) of this paragraph, the
273 party requesting or requiring the method shall bear the burden of
274 proving by preponderance of the evidence in any administrative or
275 judicial proceeding that the methods set forth in this section or
276 the commissioner's regulations do not fairly represent the extent
277 of the taxpayer's business activity in this state and that the
278 proposed method more fairly represents that activity than any
279 other reasonable method available. The alternative apportionment
280 authority specified in this subparagraph (D) is intended to be
281 invoked only in limited and unique, nonrecurring circumstances
282 where the standard apportionment provisions contained in the
283 statutes and regulations produce unanticipated results that do not
284 fairly represent the extent of the taxpayer's business activity in
285 this state.

286 (D) The commissioner shall be prohibited from
287 assessing any penalties related to a deficiency arising from
288 requiring the use of an alternative apportionment method under
289 subparagraph (B) of this paragraph unless the commissioner shall
290 establish by preponderance of the evidence that the taxpayer's



291 method was without reasonable basis or was not in accordance with
292 existing statutes or regulations.

293 (3) Nonbusiness income. Rents and royalties from real
294 or tangible personal property, capital gains, interest, dividends,
295 or patent or copyright royalties, to the extent that they
296 constitute nonbusiness income, shall be allocated as follows:

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

299 (B) Net rents and royalties from tangible personal
300 property are allocable to the state in which the property is used,
301 or to this state in their entirety if the corporation's commercial
302 domicile is in this state and the corporation is not organized
303 under the laws of or taxable in the state in which the property is
304 utilized.

305 (C) Capital gains and losses from sales of real
306 property are allocable to the state in which the property is
307 located.

308 (D) Capital gains and losses from sales of
309 tangible personal property are allocable to the state in which the
310 property is located, or to this state if the corporation's
311 commercial domicile is in this state and the corporation is not
312 taxable in the state in which the property had a situs.

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



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

318 (G) Patent and copyright royalties are allocable
319 to the state in which the patent or copyright is utilized by the
320 payer, or to this state if and to the extent that the patent or
321 copyright is utilized by the payer in a state in which the
322 corporation is not taxable and the corporation's commercial
323 domicile is in this state.

324 (H) Any other nonbusiness income shall be
325 allocated as prescribed by the commissioner.

326 (I) All expenses connected with earning
327 nonbusiness income, such as interest, taxes, general and
328 administrative expenses and such other expenses relating to the
329 production of nonbusiness income, shall be deducted from gross
330 nonbusiness income. Nonbusiness interest expense shall be
331 computed by using the ratio of nonbusiness assets to total assets
332 applied to total interest expense.

333 (d) **Foreign lenders.**

334 (1) In the case of any foreign lender, (corporation,
335 association, organization, individual, partnership, trusts or
336 estates), other than: (A) a foreign insurance company subject to
337 certification by the Commissioner of Insurance, as provided by
338 Section 83-21-1 et seq.; or (B) a foreign lender qualified under
339 the general laws of this state to do business herein; or (C) a
340 foreign lender which maintains an office or place of business



341 within this state; or (D) lenders that sold properties in this
342 state and financed such sale and reported on the installment
343 method, interest income received or accrued on or after January 1,
344 1977, from loans secured by real estate or from lending on the
345 security of real estate located within this state shall be
346 excluded from Mississippi gross income and exempt from the
347 Mississippi income tax levy and the reporting requirements.

348 (2) In the case of any foreign lender exempted in
349 paragraph (1) of this subsection, interest income received on any
350 loan finalized or consummated after January 1, 1977, shall be
351 excluded from Mississippi gross income and the net profits derived
352 therefrom shall be exempt from the Mississippi income tax levy for
353 the life of such loan.

354 (e) **Insurance companies.** Insurance companies, other than
355 life insurance companies, deriving premium income from within and
356 without the state, may determine their Mississippi net income from
357 underwriting by apportioning to this state a part of their total
358 net underwriting income by such processes or formulas of general
359 apportionment as are prescribed by the commissioner; provided that
360 a company adopting this method of reporting for any year must
361 adhere to said method of reporting for subsequent years, unless
362 permission is granted by the commissioner to change to a different
363 method of reporting; and provided that all affiliated companies of
364 the same group shall use the same method of reporting.



365 (f) **Bond requirements.** Any individual or corporation
366 subject to the tax imposed by this article, engaged in the
367 business of performing contracts which may require the payment of
368 net income taxes, may be required by the commissioner, before
369 entering into the performance of any contract or contracts the
370 consideration of which is more than Ten Thousand Dollars
371 (\$10,000.00), to execute and file a good and valid bond with a
372 surety company authorized to do business in this state, or with
373 sufficient sureties to be approved by the commissioner,
374 conditioned that all taxes which may accrue to the State of
375 Mississippi will be paid when due. Provided, however, that such
376 bond shall not exceed five percent (5%) of the total contracts
377 entered into during the taxable period, and, provided further,
378 that any taxpayer, in lieu of furnishing such bond, may pay the
379 maximum sum required herein as advance payment of taxes due on the
380 net income realized from any contract or contracts performed or
381 completed in this state.

382 **SECTION 3.** This act shall take effect and be in force from
383 and after January 1, 2019.

