

By: Representative Myers

To: Ways and Means

HOUSE BILL NO. 1693

1 AN ACT TO AMEND SECTION 27-7-5, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT NET INCOME OF NONRESIDENTS DERIVED FROM PROPERTY,  
3 ACTIVITY AND OTHER SOURCES WITHIN MISSISSIPPI IS SUBJECT TO THE  
4 STATE INCOME TAX; TO AMEND SECTION 27-7-23, MISSISSIPPI CODE OF  
5 1972, TO REVISE THE DEFINITION OF THE TERM "DOING BUSINESS" FOR  
6 PURPOSES OF THE STATE INCOME TAX LAW; AND FOR RELATED PURPOSES.

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

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

10 27-7-5. (1) There is hereby assessed and levied, to be  
11 collected and paid as hereinafter provided, for the calendar year  
12 1983 and fiscal years ending during the calendar year 1983 and all  
13 taxable years thereafter, upon the entire net income of every  
14 resident individual, corporation, association, trust or estate, in  
15 excess of the credits provided, a tax at the following rates:

16 On the first Five Thousand Dollars (\$5,000.00) of taxable  
17 income, or any part thereof, at the rate of three percent (3%);

18 On the next Five Thousand Dollars (\$5,000.00) of taxable  
19 income, or any part thereof, at the rate of four percent (4%); and



20 On all taxable income in excess of Ten Thousand Dollars  
21 (\$10,000.00), at the rate of five percent (5%).

22 (2) An S corporation, as defined in Section 27-8-3(1)(g),  
23 shall not be subject to the income tax imposed under this section.

24 (3) A like tax is hereby imposed to be assessed, collected  
25 and paid annually, except as hereinafter provided, at the rate  
26 specified in this section and as hereinafter provided, upon and  
27 with respect to the entire net income derived from property,  
28 activity or other sources within Mississippi, \* \* \* including all  
29 property owned or sold, and from every business, trade or  
30 occupation carried on in this state by individuals, corporations,  
31 partnerships, trusts or estates, not residents of the State of  
32 Mississippi.

33 (4) In the case of taxpayers having a fiscal year beginning  
34 in the calendar year 1982 and ending after the first day of  
35 January 1983, the tax due for that taxable year shall be  
36 determined by:

37 (a) Computing for the full fiscal year the amount of  
38 tax that would be due under the rates in effect for the calendar  
39 year 1982; and

40 (b) Computing for the full fiscal year the amount of  
41 tax that would be due under the rates in effect for the calendar  
42 year 1983; and

43 (c) Applying to the tax computed under paragraph (a)  
44 the ratio which the number of months falling within the earlier



45 calendar year bears to the total number of months in the fiscal  
46 year; and

47 (d) Applying to the tax computed under paragraph (b)  
48 the ratio which the number of months falling within the later  
49 calendar year bears to the total number of months within the  
50 fiscal year; and

51 (e) Adding to the tax determined under paragraph (c)  
52 the tax determined under paragraph (d) the sum of which shall be  
53 the amount of tax due for the fiscal year.

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

56 27-7-23. (a) **Definitions.**

57 (1) "Doing business" means the operation of any  
58 business enterprise or activity that results in \* \* \* financial  
59 profit or economic gain from property, activity or other sources  
60 within Mississippi, including, but not limited to, the following:

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

63 (B) The regular maintenance in Mississippi of an  
64 inventory of merchandise or material for sale, distribution or  
65 manufacture, regardless of whether kept on the premises of the  
66 taxpayer or otherwise; or

67 (C) The \* \* \* regular sale or \* \* \* distribution  
68 of \* \* \* products or services to customers in Mississippi \* \* \*  
69 that receive the products or services in Mississippi; or



70 (D) The regular rendering of service to clients or  
71 customers in Mississippi in person or by agents \* \* \*, employees  
72 or independent contractors conducting business in Mississippi; or

73 (E) The regular solicitation of business from  
74 potential customers in Mississippi; or

75 ( \* \* \*F) The owning, renting or operating of  
76 business or income-producing property, real or personal, in  
77 Mississippi; or

78 (G) The issuance of credit, debit or travel and  
79 entertainment cards to customers in Mississippi; or

80 ( \* \* \*H) The performing of contracts, prime or  
81 sublet work, for the construction, repair or renovation of real or  
82 personal property in Mississippi \* \* \*;or

83 (I) The regular performance of services outside  
84 Mississippi from which the benefits are received within  
85 Mississippi; or

86 (J) Entering into franchising or licensing  
87 agreements, selling or otherwise disposing of franchises and  
88 licenses by a franchisor or licensor to its franchisee or licensee  
89 in Mississippi; or

90 (K) The regular conduct of transactions with  
91 customers in Mississippi involving intangible personal property,  
92 including, but not limited to, loans or the extension of credit,  
93 resulting in receipts flowing to the nonresident or foreign  
94 taxpayer from within Mississippi.



95           (2) "Business income" means income of any type or  
96 class, and from any activity that meets the relationship described  
97 in the transactional test or the functional test described in this  
98 paragraph (2). The classification of income by occasionally used  
99 labels, including, but not limited to, manufacturing income,  
100 compensation for services, sales income interest, dividends,  
101 rents, royalties, gains, operating income, and nonoperating income  
102 shall not be considered when determining whether income is  
103 business or nonbusiness income. All income of the taxpayer is  
104 business income unless clearly classifiable as nonbusiness income.  
105 A taxpayer seeking to overcome a classification of income as  
106 business income must establish by a preponderance of the evidence  
107 that the income has been incorrectly classified.

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

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

118           (ii) For a transaction or activity to be in  
119 the regular course of the taxpayer's trade or business, the



120 transactions or activity need not be one that frequently occurs in  
121 the trade or business, although most frequently occurring  
122 transactions or activities shall be considered to be in the  
123 regular course of a trade or business. It is sufficient to  
124 classify a transaction or activity as being in the regular course  
125 of a trade or business if it is reasonable to conclude  
126 transactions of that type are customary in the kind of trade or  
127 business being conducted or are within the scope of what the trade  
128 or business does.

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

133 (i) Under the functional test, business  
134 income need not be derived from transactions or activities that  
135 are in the regular course of the taxpayer's own particular trade  
136 or business. It shall be sufficient if the property from which  
137 the income is derived is or was an integral, functional, necessary  
138 or operative component of the taxpayer's trade or business  
139 operations \* \* \* deriving from income, property, activity or other  
140 sources within this state.

141 (ii) Income that is derived from isolated  
142 sales, leases, assignments, licenses and other infrequently  
143 occurring dispositions, transfers or transactions involving  
144 property, including transactions made in liquidation or the



145 winding up of business is business income if the property is or  
146 was used in the taxpayer's trade or business operation. Income  
147 from the licensing of intangible assets, such as patents,  
148 copyrights, trademarks, service marks, goodwill, know-how, trade  
149 secrets and similar assets, that were developed or acquired for  
150 use by the taxpayer in his trade or business operations,  
151 constitute business income whether the licensing itself  
152 constituted the operation of a trade or business and whether the  
153 taxpayer remains in the same trade or business from or for which  
154 the intangible asset was developed or acquired.

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

167 (iv) If the property is or was held in  
168 furtherance of the taxpayer's trade or business beyond mere  
169 financial betterment, then income from the property may be



170 business income even though the actual transaction or activity  
171 involving the property that gives rise to the income does not  
172 occur in Mississippi.

173 (v) If, with respect to an item of property,  
174 a taxpayer takes a deduction from business income that is  
175 apportioned to Mississippi, or includes that item of property in  
176 the property factor, it is presumed that the item of property is  
177 or was integral to the taxpayer's trade or business operations.  
178 No presumption arises from the absence of any of this action.

179 (vi) Application of the functional test is  
180 generally unaffected by the form of the property. Income arising  
181 from intangible property is business income when the intangible  
182 property itself or the underlying value of the intangible property  
183 is or was an integral, functional, necessary or operative  
184 component to the taxpayer's trade or business operation.  
185 Therefore, while treatment of income derived from transactions  
186 involving intangible property as business income may be supported  
187 by a finding that the issuer of the intangible property and the  
188 taxpayer are engaged in the same trade or business, establishment  
189 of such a relationship is not the exclusive basis for concluding  
190 that the income constitutes business income. It is sufficient to  
191 support a finding of business income if the holding of the  
192 intangible property served an operational rather than an  
193 investment function.





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

196 (4) "Commercial domicile" means the principal place  
197 from which the trade or business of the taxpayer is directed or  
198 managed.

199 (5) "State" means any state of the United States, the  
200 District of Columbia, the Commonwealth of Puerto Rico, any  
201 territory or possession of the United States, and any foreign  
202 country or political subdivision thereof.

203 (b) **Nonresident individuals, partnerships, trusts and**  
204 **estates.**

205 (1) The tax imposed by this article shall apply to the  
206 entire net income of a taxable nonresident derived from  
207 employment, trade, business, professional \* \* \* service or  
208 personal service in Mississippi, or \* \* \* otherwise doing business  
209 in Mississippi as defined in subsection (a)(1) of this section,  
210 including the rental of real or personal property located within  
211 this state or for use herein and including the sale or exchange or  
212 other disposition of tangible or intangible property having a  
213 situs in Mississippi.

214 (2) Income derived from trade, business or other  
215 commercial activity shall be taxed to the extent that it is  
216 derived from \* \* \* property, activity or other sources within this  
217 state. Mississippi net income shall be determined in the manner  
218 prescribed by the commissioner for the allocation and/or



219 apportionment of income of foreign corporations having income from  
220 sources both within and without the state.

221 (3) A taxable nonresident shall be allowed to deduct  
222 expenses, interest, taxes, losses, bad debts, depreciation and  
223 similar business expenses only to the extent that they are  
224 allowable under this article and are attributable to the  
225 production of income allocable to and taxable by the State of  
226 Mississippi. As to allowable deductions essentially personal in  
227 nature, such as contributions to charitable organizations, medical  
228 expenses, taxes, interest and the optional standard deduction,  
229 such taxable nonresident shall be allowed deductions therefor in  
230 the ratio that the net income from sources within Mississippi  
231 bears to the total net income from all sources of such taxable  
232 nonresident, computed as if such taxable nonresident was a  
233 resident of Mississippi.

234 (c) **Foreign corporations, associations, organizations and**  
235 **other entities.**

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



244 (2) Allocation and apportionment of income.

245 (A) Except as provided in Sections 27-7-24,  
246 27-7-24.1, 27-7-24.3, 27-7-24.5, 27-7-24.7 and 27-7-24.8,  
247 Mississippi Code of 1972, any corporation or organization having  
248 business income from business activity which is taxable both  
249 within and without this state shall allocate and apportion its net  
250 business income as prescribed by regulations enacted by the  
251 commissioner. Income from services shall be apportioned to the  
252 state where the benefits of the service are received. If the  
253 business income of the corporation is derived solely from property  
254 owned \* \* \*, business done or services performed in this state and  
255 the corporation is not taxable in another state, the entire  
256 business income shall be allocated to this state. A corporation  
257 is taxable in another state if, in that state the corporation is  
258 subject to a net income tax, or a franchise tax measured by net  
259 income, or if that state has jurisdiction to subject the  
260 corporation to a net income tax regardless of whether the state  
261 does or does not subject the corporation to a net income tax.

262 (B) If the allocation and apportionment provisions  
263 of this section or regulations enacted by the commissioner do not  
264 fairly represent the extent of the taxpayer's business activity in  
265 this state, the taxpayer may petition for, or the commissioner may  
266 require, in respect to all or any part of the taxpayer's business  
267 activity, if reasonable:

268 (i) Separate accounting;



269 (ii) The exclusion of any one or more of the  
270 factors;

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

274 (iv) The employment of any other method to  
275 effectuate an equitable allocation and apportionment of the  
276 taxpayer's income.

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



293 (D) The commissioner shall be prohibited from  
294 assessing any penalties related to a deficiency arising from  
295 requiring the use of an alternative apportionment method under  
296 subparagraph (B) of this paragraph unless the commissioner shall  
297 establish by preponderance of the evidence that the taxpayer's  
298 method was without reasonable basis or was not in accordance with  
299 existing statutes or regulations.

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

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

306 (B) Net rents and royalties from tangible personal  
307 property are allocable to the state in which the property is used,  
308 or to this state in their entirety if the corporation's commercial  
309 domicile is in this state and the corporation is not organized  
310 under the laws of or taxable in the state in which the property is  
311 utilized.

312 (C) Capital gains and losses from sales of real  
313 property are allocable to the state in which the property is  
314 located.

315 (D) Capital gains and losses from sales of  
316 tangible personal property are allocable to the state in which the  
317 property is located, or to this state if the corporation's



318 commercial domicile is in this state and the corporation is not  
319 taxable in the state in which the property had a situs.

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

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

325 (G) Patent and copyright royalties are allocable  
326 to the state in which the patent or copyright is utilized by the  
327 payer, or to this state if and to the extent that the patent or  
328 copyright is utilized by the payer in a state in which the  
329 corporation is not taxable and the corporation's commercial  
330 domicile is in this state.

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

333 (I) All expenses connected with earning  
334 nonbusiness income, such as interest, taxes, general and  
335 administrative expenses and such other expenses relating to the  
336 production of nonbusiness income, shall be deducted from gross  
337 nonbusiness income. Nonbusiness interest expense shall be  
338 computed by using the ratio of nonbusiness assets to total assets  
339 applied to total interest expense.

340 (d) **Foreign lenders.**

341 (1) In the case of any foreign lender, (corporation,  
342 association, organization, individual, partnership, trusts or



343 estates), other than: (A) a foreign insurance company subject to  
344 certification by the Commissioner of Insurance, as provided by  
345 Section 83-21-1 et seq.; or (B) a foreign lender qualified under  
346 the general laws of this state to do business herein; or (C) a  
347 foreign lender which maintains an office or place of business  
348 within this state; or (D) lenders that sold properties in this  
349 state and financed such sale and reported on the installment  
350 method, interest income received or accrued on or after January 1,  
351 1977, from loans secured by real estate or from lending on the  
352 security of real estate located within this state shall be  
353 excluded from Mississippi gross income and exempt from the  
354 Mississippi income tax levy and the reporting requirements.

355 (2) In the case of any foreign lender exempted in  
356 paragraph (1) of this subsection, interest income received on any  
357 loan finalized or consummated after January 1, 1977, shall be  
358 excluded from Mississippi gross income and the net profits derived  
359 therefrom shall be exempt from the Mississippi income tax levy for  
360 the life of such loan.

361 (e) **Insurance companies.** Insurance companies, other than  
362 life insurance companies, deriving premium income from within and  
363 without the state, may determine their Mississippi net income from  
364 underwriting by apportioning to this state a part of their total  
365 net underwriting income by such processes or formulas of general  
366 apportionment as are prescribed by the commissioner; provided that  
367 a company adopting this method of reporting for any year must



368 adhere to said method of reporting for subsequent years, unless  
369 permission is granted by the commissioner to change to a different  
370 method of reporting; and provided that all affiliated companies of  
371 the same group shall use the same method of reporting.

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

389 **SECTION 3.** This act shall take effect and be in force from  
390 and after January 1, 2016.

