

By: Representative Smith

To: Ways and Means

HOUSE BILL NO. 1583

1 AN ACT TO PROVIDE FOR THE METHOD OF APPORTIONMENT OF INCOME
2 FOR INCOME TAX PURPOSES OF A MAJOR MEDICAL LABORATORY SERVICE
3 FACILITY; 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 facility 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 of the taxpayer in this state



20 during the taxable year and the denominator of which is the
21 medical laboratory services receipts of the taxpayer within and
22 without this state during the taxable year.

23 (3) (a) Sales are determined to be within Mississippi if:

24 (i) The sale or service relates to real property
25 that is located in Mississippi;

26 (ii) The service relates to tangible personal
27 property that is located in this state at the time the service is
28 performed, or relates to property that is to be delivered to a
29 recipient in this state;

30 (iii) The service relates to intangible property
31 being used in this state;

32 (iv) The service does not meet one (1) of the
33 criteria listed in subparagraphs (i) through (iii) and is provided
34 to an individual who is physically located in this state at the
35 time of receipt; or

36 (v) The service does not meet one (1) of the
37 criteria listed in subparagraphs (i) through (iii) and is provided
38 to a business and relates to any part of a trade or business of
39 the business operated in this state.

40 (b) If the location of an individual who receives the
41 service or the location where a business receives the service
42 cannot be determined, the service will be deemed to have been
43 received at the service address.

44 (4) For purposes of this section:



45 (a) "Major Medical Laboratory Service Facility" means a
46 company or group of affiliated companies (as defined in Section
47 27-7-37) who perform laboratory testing and analysis for the
48 medical industry and who invest a minimum of Eighty Million
49 Dollars (\$80,000,000.00) over a three-year period in land,
50 building, and equipment, located in Mississippi.

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

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

55 27-7-23. (a) **Definitions.**

56 (1) "Doing business" means the operation of any
57 business enterprise or activity in Mississippi for financial
58 profit or economic gain, including, but not limited to, the
59 following:

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

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

66 (C) The selling or distributing of merchandise to
67 customers in Mississippi directly from a company-owned or operated
68 vehicle when title to the merchandise is transferred from the



69 seller or distributor to the customer at the time of the sale or
70 distribution (transient selling); or

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

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

75 (F) The performing of contracts, prime or sublet
76 work, for the construction, repair or renovation of real or
77 personal property.

78 (2) "Business income" means income of any type or
79 class, and from any activity that meets the relationship described
80 in the transactional test or the functional test described in this
81 paragraph (2). The classification of income by occasionally used
82 labels, including, but not limited to, manufacturing income,
83 compensation for services, sales income interest, dividends,
84 rents, royalties, gains, operating income, and nonoperating income
85 shall not be considered when determining whether income is
86 business or nonbusiness income. All income of the taxpayer is
87 business income unless clearly classifiable as nonbusiness income.
88 A taxpayer seeking to overcome a classification of income as
89 business income must establish by a preponderance of the evidence
90 that the income has been incorrectly classified.

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



94 (i) If the transaction or activity is in the
95 regular course of the taxpayer's trade or business, part of which
96 trade or business is conducted within Mississippi, the resulting
97 income of the transaction or activity is business income for
98 Mississippi. Income may be business income even though the actual
99 transaction or activity that gives rise to the income does not
100 occur in Mississippi.

101 (ii) For a transaction or activity to be in
102 the regular course of the taxpayer's trade or business, the
103 transactions or activity need not be one that frequently occurs in
104 the trade or business, although most frequently occurring
105 transactions or activities shall be considered to be in the
106 regular course of a trade or business. It is sufficient to
107 classify a transaction or activity as being in the regular course
108 of a trade or business if it is reasonable to conclude
109 transactions of that type are customary in the kind of trade or
110 business being conducted or are within the scope of what the trade
111 or business does.

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

116 (i) Under the functional test, business
117 income need not be derived from transactions or activities that
118 are in the regular course of the taxpayer's own particular trade



119 or business. It shall be sufficient if the property from which
120 the income is derived is or was an integral, functional, necessary
121 or operative component of the taxpayer's trade or business
122 operations, part of which trade or business is or was conducted
123 within this state.

124 (ii) Income that is derived from isolated
125 sales, leases, assignments, licenses and other infrequently
126 occurring dispositions, transfers or transactions involving
127 property, including transactions made in liquidation or the
128 winding up of business is business income if the property is or
129 was used in the taxpayer's trade or business operation. Income
130 from the licensing of intangible assets, such as patents,
131 copyrights, trademarks, service marks, goodwill, know-how, trade
132 secrets and similar assets, that were developed or acquired for
133 use by the taxpayer in his trade or business operations,
134 constitute business income whether the licensing itself
135 constituted the operation of a trade or business and whether the
136 taxpayer remains in the same trade or business from or for which
137 the intangible asset was developed or acquired.

138 (iii) Under the functional test, income from
139 intangible property is business income when the intangible
140 property serves an operating function, as opposed to solely an
141 investment function. The relevant inquiry shall focus on whether
142 the property is or was held in furtherance of the taxpayer's trade
143 or business, that is, on the objective characteristics of the



144 intangible property's use or acquisition and its relation to the
145 taxpayer and the taxpayer's activities. The functional test is
146 not satisfied where the holding of the property is limited solely
147 to an investment function as in the case where the holding of the
148 property is limited to mere financial betterment of the taxpayer
149 in general.

150 (iv) If the property is or was held in
151 furtherance of the taxpayer's trade or business beyond mere
152 financial betterment, then income from the property may be
153 business income even though the actual transaction or activity
154 involving the property that gives rise to the income does not
155 occur in Mississippi.

156 (v) If, with respect to an item of property,
157 a taxpayer takes a deduction from business income that is
158 apportioned to Mississippi, or includes that item of property in
159 the property factor, it is presumed that the item of property is
160 or was integral to the taxpayer's trade or business operations.
161 No presumption arises from the absence of any of this action.

162 (vi) Application of the functional test is
163 generally unaffected by the form of the property. Income arising
164 from intangible property is business income when the intangible
165 property itself or the underlying value of the intangible property
166 is or was an integral, functional, necessary or operative
167 component to the taxpayer's trade or business operation.

168 Therefore, while treatment of income derived from transactions



169 involving intangible property as business income may be supported
170 by a finding that the issuer of the intangible property and the
171 taxpayer are engaged in the same trade or business, establishment
172 of such a relationship is not the exclusive basis for concluding
173 that the income constitutes business income. It is sufficient to
174 support a finding of business income if the holding of the
175 intangible property served an operational rather than an
176 investment function.

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

179 (4) "Commercial domicile" means the principal place
180 from which the trade or business of the taxpayer is directed or
181 managed.

182 (5) "State" means any state of the United States, the
183 District of Columbia, the Commonwealth of Puerto Rico, any
184 territory or possession of the United States, and any foreign
185 country or political subdivision thereof.

186 (b) **Nonresident individuals, partnerships, trusts and**
187 **estates.**

188 (1) The tax imposed by this article shall apply to the
189 entire net income of a taxable nonresident derived from
190 employment, trade, business, professional, personal service or
191 other activity for financial gain or profit, performed or carried
192 on within Mississippi, including the rental of real or personal
193 property located within this state or for use herein and including



194 the sale or exchange or other disposition of tangible or
195 intangible property having a situs in Mississippi.

196 (2) Income derived from trade, business or other
197 commercial activity shall be taxed to the extent that it is
198 derived from such activity within this state. Mississippi net
199 income shall be determined in the manner prescribed by the
200 commissioner for the allocation and/or apportionment of income of
201 foreign corporations having income from sources both within and
202 without the state.

203 (3) A taxable nonresident shall be allowed to deduct
204 expenses, interest, taxes, losses, bad debts, depreciation and
205 similar business expenses only to the extent that they are
206 allowable under this article and are attributable to the
207 production of income allocable to and taxable by the State of
208 Mississippi. As to allowable deductions essentially personal in
209 nature, such as contributions to charitable organizations, medical
210 expenses, taxes, interest and the optional standard deduction,
211 such taxable nonresident shall be allowed deductions therefor in
212 the ratio that the net income from sources within Mississippi
213 bears to the total net income from all sources of such taxable
214 nonresident, computed as if such taxable nonresident was a
215 resident of Mississippi.

216 (c) **Foreign corporations, associations, organizations and**
217 **other entities.**



218 (1) Corporations and organizations required to file.
219 All foreign corporations and other organizations which have
220 obtained a certificate of authority from the Secretary of State to
221 do business in Mississippi, or corporations or organizations which
222 are in fact doing business in Mississippi, are subject to the
223 income tax levy and are required to file annual income tax returns
224 unless the corporation or organization is specifically exempt from
225 tax by this article.

226 (2) Allocation and apportionment of income.

227 (A) Except as provided in Sections 27-7-24,
228 27-7-24.1, 27-7-24.3, 27-7-24.5, 27-7-24.7 * * *, 27-7-24.8 and
229 27-7-24.9, Mississippi Code of 1972, any corporation or
230 organization having business income from business activity which
231 is taxable both within and without this state shall allocate and
232 apportion its net business income as prescribed by regulations
233 enacted by the commissioner. If the business income of the
234 corporation is derived solely from property owned or business done
235 in this state and the corporation is not taxable in another state,
236 the entire business income shall be allocated to this state. A
237 corporation is taxable in another state if, in that state the
238 corporation is subject to a net income tax, or a franchise tax
239 measured by net income, or if that state has jurisdiction to
240 subject the corporation to a net income tax regardless of whether
241 the state does or does not subject the corporation to a net income
242 tax.



243 (B) If the allocation and apportionment provisions
244 of this section or regulations enacted by the commissioner do not
245 fairly represent the extent of the taxpayer's business activity in
246 this state, the taxpayer may petition for, or the commissioner may
247 require, in respect to all or any part of the taxpayer's business
248 activity, if reasonable:

249 (i) Separate accounting;

250 (ii) The exclusion of any one or more of the
251 factors;

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

255 (iv) The employment of any other method to
256 effectuate an equitable allocation and apportionment of the
257 taxpayer's income.

258 (C) In any instance in which a taxpayer requests
259 or the commissioner requires the use of any of the alternative
260 apportionment methods in subparagraph (B) of this paragraph, the
261 party requesting or requiring the method shall bear the burden of
262 proving by preponderance of the evidence in any administrative or
263 judicial proceeding that the methods set forth in this section or
264 the commissioner's regulations do not fairly represent the extent
265 of the taxpayer's business activity in this state and that the
266 proposed method more fairly represents that activity than any
267 other reasonable method available. The alternative apportionment



268 authority specified in this subparagraph (D) is intended to be
269 invoked only in limited and unique, nonrecurring circumstances
270 where the standard apportionment provisions contained in the
271 statutes and regulations produce unanticipated results that do not
272 fairly represent the extent of the taxpayer's business activity in
273 this state.

274 (D) The commissioner shall be prohibited from
275 assessing any penalties related to a deficiency arising from
276 requiring the use of an alternative apportionment method under
277 subparagraph (B) of this paragraph unless the commissioner shall
278 establish by preponderance of the evidence that the taxpayer's
279 method was without reasonable basis or was not in accordance with
280 existing statutes or regulations.

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

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

287 (B) Net rents and royalties from tangible personal
288 property are allocable to the state in which the property is used,
289 or to this state in their entirety if the corporation's commercial
290 domicile is in this state and the corporation is not organized
291 under the laws of or taxable in the state in which the property is
292 utilized.



293 (C) Capital gains and losses from sales of real
294 property are allocable to the state in which the property is
295 located.

296 (D) Capital gains and losses from sales of
297 tangible personal property are allocable to the state in which the
298 property is located, or to this state if the corporation's
299 commercial domicile is in this state and the corporation is not
300 taxable in the state in which the property had a situs.

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

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

306 (G) Patent and copyright royalties are allocable
307 to the state in which the patent or copyright is utilized by the
308 payer, or to this state if and to the extent that the patent or
309 copyright is utilized by the payer in a state in which the
310 corporation is not taxable and the corporation's commercial
311 domicile is in this state.

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

314 (I) All expenses connected with earning
315 nonbusiness income, such as interest, taxes, general and
316 administrative expenses and such other expenses relating to the
317 production of nonbusiness income, shall be deducted from gross



318 nonbusiness income. Nonbusiness interest expense shall be
319 computed by using the ratio of nonbusiness assets to total assets
320 applied to total interest expense.

321 (d) **Foreign lenders.**

322 (1) In the case of any foreign lender, (corporation,
323 association, organization, individual, partnership, trusts or
324 estates), other than: (A) a foreign insurance company subject to
325 certification by the Commissioner of Insurance, as provided by
326 Section 83-21-1 et seq.; or (B) a foreign lender qualified under
327 the general laws of this state to do business herein; or (C) a
328 foreign lender which maintains an office or place of business
329 within this state; or (D) lenders that sold properties in this
330 state and financed such sale and reported on the installment
331 method, interest income received or accrued on or after January 1,
332 1977, from loans secured by real estate or from lending on the
333 security of real estate located within this state shall be
334 excluded from Mississippi gross income and exempt from the
335 Mississippi income tax levy and the reporting requirements.

336 (2) In the case of any foreign lender exempted in
337 paragraph (1) of this subsection, interest income received on any
338 loan finalized or consummated after January 1, 1977, shall be
339 excluded from Mississippi gross income and the net profits derived
340 therefrom shall be exempt from the Mississippi income tax levy for
341 the life of such loan.



342 (e) **Insurance companies.** Insurance companies, other than
343 life insurance companies, deriving premium income from within and
344 without the state, may determine their Mississippi net income from
345 underwriting by apportioning to this state a part of their total
346 net underwriting income by such processes or formulas of general
347 apportionment as are prescribed by the commissioner; provided that
348 a company adopting this method of reporting for any year must
349 adhere to said method of reporting for subsequent years, unless
350 permission is granted by the commissioner to change to a different
351 method of reporting; and provided that all affiliated companies of
352 the same group shall use the same method of reporting.

353 (f) **Bond requirements.** Any individual or corporation
354 subject to the tax imposed by this article, engaged in the
355 business of performing contracts which may require the payment of
356 net income taxes, may be required by the commissioner, before
357 entering into the performance of any contract or contracts the
358 consideration of which is more than Ten Thousand Dollars
359 (\$10,000.00), to execute and file a good and valid bond with a
360 surety company authorized to do business in this state, or with
361 sufficient sureties to be approved by the commissioner,
362 conditioned that all taxes which may accrue to the State of
363 Mississippi will be paid when due. Provided, however, that such
364 bond shall not exceed five percent (5%) of the total contracts
365 entered into during the taxable period, and, provided further,
366 that any taxpayer, in lieu of furnishing such bond, may pay the



367 maximum sum required herein as advance payment of taxes due on the
368 net income realized from any contract or contracts performed or
369 completed in this state.

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